

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Douglas A. Kelley, in his)	File No. 19-cv-1756
capacity as the Trustee of the)	(WMW)
BMO Litigation Trust,)	
)	
Plaintiff,)	St. Paul, Minnesota
)	October 14, 2022
vs.)	8:38 a.m.
)	
BMO Harris Bank N.A., as)	
successor to M&I Marshall and)	
Ilsley Bank,)	
)	
Defendant.)	

BEFORE THE HONORABLE WILHELMINA M. WRIGHT
UNITED STATES DISTRICT COURT JUDGE

* * * REDACTED TRANSCRIPT * * *

(JURY TRIAL VOLUME III)

Proceedings reported by certified court reporter;
transcript produced with computer.

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5	580
178	631
188	712
189	716
234	651
296	840
333	742
411	764
667	840
668	840

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P R O C E E D I N G S

IN OPEN COURT

(JURY NOT PRESENT)

LAW CLERK: The matter before the Court is Case Number 19-1756, Kelley vs. BMO Harris Bank.

Counsel, please stand and make your appearance for the record.

MR. COLLYARD: Good morning, Your Honor. Mike Collyard on behalf of the plaintiff.

THE COURT: Thank you. Good morning, Mr. Collyard.

MR. GLEESON: Good morning, Judge. John Gleeson on behalf of BMO.

THE COURT: Thank you. Good morning, Mr. Gleeson. Are we ready to proceed?

MS. PARLOVECCHIO: Good morning, Your Honor. Gina Parlovecchio for BMO Harris. We just had one very quick issue to address with Your Honor in regard to the order that was issued this morning.

First, just seeking some clarification from the Court. First, Your Honor expressed some consternation yesterday and again expressed in the order about the timing of this issue being raised, and so we just wanted to make a brief record about the timing of this issue.

The SARs issue --

1 THE COURT: Is that necessary --

2 MS. PARLOVECCHIO: It is for the record.

3 THE COURT: -- for the decision?

4 MS. PARLOVECCHIO: It is just to clarify for the
5 record, Your Honor, very briefly.

6 THE COURT: What's the purpose -- why does the
7 record need to be clarified?

8 MS. PARLOVECCHIO: Because we had a question about
9 the order and the basis on which the Court is issuing its
10 order, Number One; and, Number Two, just wanted to make the
11 record the manner in which the Court -- the manner in which
12 BMO Harris attempted to resolve this issue before trial.

13 THE COURT: And that's relevant because?

14 MS. PARLOVECCHIO: It's relevant as to the
15 resolution of this issue, Your Honor, to make our record.

16 THE COURT: Very well.

17 MS. PARLOVECCHIO: In regard to the basis for the
18 Court's order, I know that the Court issued its order based
19 on the bank examiner's privilege, and BMO Harris wanted to
20 just get clarification as to whether the Court's order is
21 also based on Title 31, the Bank Secrecy Act, which
22 prohibits disclosure of SARs, the fact that a SAR was
23 issued. And so we are seeking clarification from the Court
24 on that issue, because it is a categorical prohibition, and
25 it also carries civil and criminal penalties for the bank

1 and its officers and employees for disclosing that type of
2 information. So that was our first issue.

3 THE COURT: Is that necessary for the decision
4 that has been made?

5 MS. PARLOVECCHIO: It is necessary to clarify it
6 for the record, Your Honor.

7 THE COURT: I'm asking why.

8 MS. PARLOVECCHIO: Because the bank would be
9 subject to criminal and civil penalties as a result of
10 disclosing information about the fact that a SAR was filed,
11 the fact of the SAR itself, and entering that into evidence
12 and making that publicly disclosed.

13 THE COURT: And doesn't the order take care of
14 that?

15 MS. PARLOVECCHIO: It doesn't directly address
16 that issue, Your Honor. The order only addresses the issue
17 as to the bank examiner's privilege, which is a slightly
18 different -- it is a completely different concept actually.
19 It's under the regs. The issue that we raised was under
20 Title 31 of the Bank Secrecy Act, which actually
21 categorically prohibits disclosure.

22 THE COURT: And is there any expectation that
23 there will be disclosure in light of the ruling that I have
24 made?

25 MS. PARLOVECCHIO: Yes, Your Honor.

1 THE COURT: Why?

2 MS. PARLOVECCHIO: Because Mr. Collyard can ask
3 Ms. Pesch, based on the Court's ruling, whether or not a SAR
4 was filed as a result of her analysis of the transactions
5 that have proceeded prior to 2008. And if she answers
6 affirmatively, that would subject her and other members of
7 the BMO Harris team to potential civil and criminal
8 penalties.

9 THE COURT: Okay. I understand your position.

10 MS. PARLOVECCHIO: And just briefly, Your Honor,
11 it will take one second, just to clarify the record as to
12 the manner in which the bank approached this issue.

13 We just wanted to clarify for the Court the fact
14 that BMO Harris had raised this issue to the regulators on
15 multiple occasions leading up to trial. We anticipated this
16 would be an issue.

17 And while we did get clarity from our regulators
18 in regard to certain SAR-related issues and certain
19 regulatory documents that we anticipated may come into
20 evidence during trial, the one issue that remained
21 unresolved was the SAR issue. And we literally just got
22 notice from a regulator the day before yesterday.

23 THE COURT: So you literally got what? I just
24 didn't hear you.

25 MS. PARLOVECCHIO: I'm sorry. Notice from the

1 regulator the day before yesterday that they would not
2 permit disclosure of SAR -- the SAR or SAR-related
3 information in this trial.

4 THE COURT: Okay. Thank you.

5 MS. PARLOVECCHIO: Thank you, Your Honor.

6 THE COURT: Counsel.

7 MR. COLLYARD: Yes, Judge. You had asked if we
8 were ready to proceed, and I am ready to proceed.

9 THE COURT: Okay. We are.

10 MR. COLLYARD: Thank you.

11 (Pause)

12 **IN OPEN COURT**

13 **(JURY PRESENT)**

14 THE COURT: Good morning. Please be seated.
15 Counsel, you may proceed.

16 MR. COLLYARD: Thank you, Your Honor. We would
17 like to continue with the examination of Ms. Mary Pesch.

18 MR. GLEESON: She's on the way, Judge.

19 THE COURT: Thank you.

20 (Pause)

21 MR. GLEESON: Judge, she's in the restroom.
22 Sorry.

23 THE COURT: Okay.

24 (Pause)

25 THE COURT: Good morning. Please be seated.

Pesch - Cross

1 I will simply remind you that you are under oath.

2 Okay?

3 You may proceed.

4 MR. COLLYARD: Thank you, Your Honor.

5 (Mary Pesch)

6 **CONTINUED CROSS-EXAMINATION**

7 BY MR. COLLYARD:

8 Q. Good morning, Ms. Pesch.

9 A. Good morning.

10 Q. Welcome back.

11 A. Thank you.

12 Q. We left yesterday watching a video from M&I CEO back in
13 the 2004 time period, Dennis Kuester. Do you remember that?

14 A. Yes.

15 Q. And you had seen that video before, haven't you?

16 A. Yes.

17 Q. I just want to ask you a few questions of what you
18 believe the message to be from that video. Okay?

19 THE COURT: I didn't hear your response.

20 THE WITNESS: Okay. Yes.

21 BY MR. COLLYARD:

22 Q. You agree that part of Mr. Kuester's message was that
23 anti-money laundering work is important?

24 A. Yes.

25 Q. You agree that part of Mr. Kuester's message was that

1 anti-money laundering work is the responsibility of everyone
2 at the bank?

3 A. Yes.

4 Q. And you agree that Mr. Kuester's message -- or part of
5 Mr. Kuester's message was that anti-money laundering work is
6 something that the bank had to do to protect our
7 communities?

8 A. Yes.

9 Q. And you agree that part of Mr. Kuester's message was
10 that anti-money laundering work was something that the bank
11 had to do to protect our country?

12 A. I don't remember his exact words when he talked about
13 the country.

14 Q. Do you agree, Ms. Pesch, that anti-money laundering work
15 is something that the bank had to do to protect our country?

16 A. I agree that the bank had to do it, and it protected the
17 country.

18 Q. And do you agree that the bank's anti-money laundering
19 work was supported all the way up through top management at
20 the bank?

21 A. Yes.

22 Q. Mr. Kuester said, if you remember, he said, "You play a
23 key role in ensuring that M&I is not used as a conduit for
24 illegal activity." Do you agree with that statement?

25 A. Yes.

Pesch - Cross

1 Q. And do you agree with the concept that that was supposed
2 to be recognized across the bank?

3 A. Yes.

4 Q. And you understood that concept to be true at the time
5 that you were working at M&I Bank?

6 A. Yes.

7 Q. And that was something that was being taught to the bank
8 personnel through these types of training sessions, correct?

9 A. Yes.

10 Q. Do you also agree with Mr. Kuester's statement that
11 anti-money laundering compliance is a responsibility that
12 was shared across the bank regardless of where personnel
13 worked, what they did, or the level of customer contact they
14 had?

15 A. Yes.

16 Q. And, Ms. Pesch, you also agree that recognizing and
17 complying with the Bank Secrecy Act and anti-money
18 laundering regulations was, as Mr. Kuester said, the right
19 thing to do?

20 A. Yes.

21 Q. I want to talk for a second a couple concepts. I want
22 to talk about the concept of willful blindness, and I want
23 to talk about a concept called "know your customer." Are
24 you familiar with both of those concepts?

25 A. I couldn't hear -- I heard willful blindness. Can you

say clearly the second part.

Q. "Know your customer."

A. Yes.

Q. You are familiar with the concept of "know your customer"?

A. Yes.

Q. Let's talk about willful blindness for a second. You've heard of the term "willful blindness," right?

A. Yes.

Q. And do you agree that willful blindness is a term that the Anti-Money Laundering Group used?

A. It was a term we needed to know, yes.

Q. That was a term that would be spoken about within the Anti-Money Laundering Group, correct?

A. Yes.

Q. And you agree that willful blindness means that if something was unusual and you didn't do extra research to try to understand it, that would be willful blindness?

MS. MOMOH: Objection, Your Honor, calls for a legal conclusion.

THE COURT: Overruled.

THE WITNESS: That's not exactly how I would define "willful blindness."

BY MR. COLLYARD:

Q. If you can go to your deposition transcript, please,

Pesch - Cross
1 Ms. Pesch.

2 MR. COLLYARD: Counsel, it's going to be on page
3 61 to 62.

4 BY MR. COLLYARD:

5 Q. And, Ms. Pesch, if you go to the very bottom of page 61,
6 do you see line 25?

7 A. Yes.

8 Q. I asked you the question: "I'm asking you if you agree
9 that willful blindness is also where you know something
10 seems unusual, but you choose to not look into it?" Do you
11 see that?

12 A. Yes.

13 Q. And can you read your answer to me.

14 A. "If something was unusual and you didn't do extra
15 research to try to understand it, that would be willful
16 blindness."

17 Q. And that was your testimony, correct?

18 A. Yes.

19 Q. Do you also agree that willful blindness means that --
20 let me back up.

21 Do you agree that willful blindness also means
22 that intentionally not looking into something that you think
23 might be suspicious, that would be willful blindness?

24 A. Yes.

25 Q. And you also agree that the practice of ignoring red

Pesch - Cross

1 flags is willful blindness?

2 A. Today I would describe willful blindness as suspecting
3 something was wrong and turning -- ignoring it.

4 Q. Go to Plaintiff's Exhibit 5. Are you there, Ms. Pesch?

5 A. Yes.

6 Q. Can you take a look at the first part of it. It's the
7 Bank Secrecy Act and Anti-Money Laundering Compliance 2004
8 Training Session. Do you see that?

9 A. Yes.

10 Q. Is this another example of the training sessions that
11 M&I was putting on to educate its employees about anti-money
12 laundering work?

13 A. Yes.

14 Q. And Bank Secrecy Act compliance?

15 A. Yes.

16 Q. And it says here that Kelley Maltsch -- do you see where
17 it says, "Kelley Maltsch"?

18 A. Yes.

19 Q. Who is Kelley Maltsch?

20 A. She worked in the compliance department at M&I.

21 Q. And you knew who she was?

22 A. Yes.

23 Q. You worked with her?

24 A. Yes.

25 Q. And --

1 MR. COLLYARD: Your Honor, I offer Plaintiff's
2 Exhibit 5. It's my understanding that defendants have no
3 objection to the authenticity of this document, and that
4 it's a business record.

5 THE COURT: You offer it, you said? Is that --

6 MR. COLLYARD: Yes, I offer Plaintiff's Exhibit 5.

7 MS. MOMOH: No objection, Your Honor.

8 THE COURT: Plaintiff's Exhibit 5 is received.

9 MR. COLLYARD: Thank you, Your Honor.

10 BY MR. COLLYARD:

11 Q. Ms. Pesch, we are going to turn what I will call
12 slide 30, and it's on page number 30 of this exhibit. You
13 have it on your screen too if that's easier.

14 And you see at the top it says, "Willful
15 Blindness"?

16 A. Yes.

17 Q. And it reads, "The practice of ignoring potential
18 criminal activity is referred to as willful blindness." Is
19 that right?

20 A. Yes.

21 Q. And you agree with that, right?

22 A. Yes.

23 Q. And you agree that the law requires that banks have
24 policies and procedures in place to identify and report
25 suspicious activity; is that right?

Pesch - Cross

1 A. Yes.

2 Q. And you agree that the bank wasn't allowed to be
3 willfully blind to suspicious activity?

4 A. Yes.

5 Q. Put that aside, but we are going to come back to it here
6 in a little bit.

7 I talked about willful blindness. Now I want to
8 talk to you about "know your customer." You told me that
9 you were familiar with the concept of "know your customer,"
10 right?

11 A. Yes.

12 Q. "Know your customer" is a term that was used at M&I Bank
13 from 2005 up through 2008; is that right?

14 A. Yes.

15 Q. And you agree that "know your customer" means that you
16 have to understand who your customer is, and then it will
17 help you determine if the transaction activity makes sense
18 for the customer; is that right?

19 A. Sorry. That was kind of long. Can you go slower or
20 break it up?

21 Q. I will.

22 Do you agree that what -- do you agree that "know
23 your customer" means that you have to understand who your
24 customer is, and then it will help you determine if the
25 transaction activity makes sense for the customer?

Pesch - Cross

1 A. We had to have a reasonable understanding of who the
2 customer was.

3 Q. Can you go to your deposition, please.

4 MR. COLLYARD: Counsel, it is going to be page 21.

5 BY MR. COLLYARD:

6 Q. If you look at page 21 towards the bottom, line 17,
7 Ms. Pesch, I ask you the question of: "Have you heard the
8 concept of 'know your customer'?" Do you see that?

9 A. Yes.

10 Q. And you responded, "Yes." Do you see that?

11 A. Yes.

12 Q. And I said, "What does that mean?"

13 Can you read your answer.

14 A. "It means you have to understand who your customer is,
15 and it will help you determine if the activity makes sense
16 for that customer."

17 Q. Okay. And the activity you are talking about --

18 MS. MOMOH: Objection, Your Honor. Sidebar,
19 please?

20 **(At sidebar)**

21 MS. MOMOH: He's using the deposition transcript
22 to refresh her recollection, but he can't have her read her
23 testimony that was in the deposition transcript. That would
24 be hearsay, unless he's trying to impeach her with a prior
25 inconsistent statement. And based on his lines of

Pesch - Cross

1 questions, it sounds as though he is just trying to refresh
2 her recollection. If it's for impeachment purposes, I would
3 prefer that is it is clarified for the record so I
4 understand the purpose of the use of this transcript.

5 MR. COLLYARD: I'm asking her proper impeachment,
6 Judge. I asked her the question, she says differently, and
7 I go and show her the question and I ask her to read it.

8 THE COURT: The proper way to do it is for you to
9 read it and say: Isn't it true that you said at this time
10 and this occasion and you state what she said and then ask
11 her if that is, in fact, what she said. That's the proper
12 impeachment.

13 MR. COLLYARD: Okay. So you want me to ask her
14 the question and then do the answer myself and ask her if
15 that's what she said instead of asking her to read the
16 question?

17 THE COURT: That's how you impeach the witness
18 with the prior inconsistent statement if that's what you are
19 trying to do.

20 MR. COLLYARD: Okay. Thank you.

21 THE COURT: You're welcome.

22 MS. MOMOH: Thank you, Your Honor.

23 **(In open court)**

24 BY MR. COLLYARD:

25 Q. Ms. Pesch, do you agree that understanding who your

customer is as part of the concept of "know your customer" means understanding what type of business your customer is in?

A. Yes.

Q. And in the Anti-Money Laundering Group, you were charged with knowing who your customers were and their business transaction activities, correct?

A. What do you mean know their business transactions?

Q. Let me back up. You were charged with knowing the customers that you were reviewing and investigating their transaction activity; is that right?

A. Yes.

Q. And you agree that it's important to know your customer's business for anti-money laundering purposes?

A. To understand what business they're in, yes.

Q. And that was important for reviewing and analyzing transaction activity to determine whether or not that activity was indicative of money laundering, correct?

A. Yes.

Q. Let's go to -- we talked about Plaintiff's Exhibit 4 yesterday. Can we go back to Plaintiff's Exhibit 4, please.

And, again, to remind us what Exhibit 4 is, this is a training -- PowerPoint from a training session, correct?

A. Yes.

1 Q. And this is, again, where the bank was teaching its
2 personnel about how to recognize suspicious activity; is
3 that right?

4 A. Yes.

5 Q. Okay. Can we go to slide 19, please, which is
6 Plaintiff's Exhibit 4, page 19.

7 You see up at the top there, Ms. Pesch, it reads,
8 "Don't Make Assumptions of Legitimacy. Know Your Customer
9 Well." Do you see that?

10 A. Yes.

11 Q. And you agree that the bank was not supposed to make
12 assumptions of any customer activity being legitimate?

13 A. Yes.

14 Q. And down below it says (as read), "Be 'familiar' with
15 the customer isn't enough." Do you see that?

16 A. Yes.

17 Q. And then it reads, "Oh yeah, he does that all the time."
18 Do you see that?

19 A. Yes.

20 Q. And do you agree that saying, for example -- or the
21 concept of, oh, yeah, he does it all the time, that was not
22 a suspicious -- or that was not a sufficient justification
23 for ignoring potential suspicious activity?

24 A. We wouldn't ignore potentially suspicious activity, but
25 that by itself would -- just because it was done all the

1 time would not be a reason by itself to say something was
2 okay.

3 Q. Down below it says, "Be careful of 'best customer'
4 syndrome." Do you see that?

5 A. Yes.

6 Q. And is that an acknowledgement, Ms. Pesch, that anyone
7 could potentially be involved in money laundering, even
8 customers that the bank considered to be good customers?

9 A. Yes.

10 Q. Then down below it says, "If it sounds too good to be
11 true - it probably is." Do you see that?

12 A. Yes.

13 Q. And what is meant by that concept?

14 A. I would say exactly what it says. I don't know how to
15 explain it better.

16 Q. Okay. You know it when you see it?

17 A. I don't understand what you're saying.

18 Q. I'm asking you if that means you know suspicious
19 activity when you see it. If it sounds too good to be true,
20 then it probably is, and that means you know suspicious
21 activity when you see it?

22 MS. MOMOH: Objection, Your Honor,
23 mischaracterizes the statement in the document.

24 THE COURT: It's a question. You may answer the
25 question if that is -- so there's not a mischaracterization.

Pesch - Cross

1 There's a question pending. You can repeat the question.

2 THE WITNESS: Yeah, can you repeat it, please?

3 BY MR. COLLYARD:

4 Q. Sure. I'm trying to -- let me ask you: What do you
5 take that to mean, if it sounds too good to be true, it
6 probably is? What does that mean when you're looking for
7 suspicious activity?

8 A. I would say exactly what it says. If it sounds too good
9 to be true, it probably is. I don't know how to say it
10 better than that.

11 Q. And do you agree, Ms. Pesch, that knowing your customer
12 and understanding their activities was an important concept
13 in the Anti-Money Laundering Group?

14 A. Having a reasonable understanding of who our customer
15 was to see if that activity made sense for the customer,
16 yes.

17 Q. Let's go to -- back to Plaintiff's Exhibit 5, and we're
18 going to go to slide 31. And at the top it reads, "Know
19 Your Customer, Understand Their Activities." Do you see
20 that?

21 A. Yes.

22 Q. And down below it reads, "Be familiar with the types of
23 transactions typically conducted by similarly-situated
24 customers." Do you see that?

25 A. Yes.

1 Q. And that was a concept that the bank was teaching its
2 personnel, correct?

3 A. Yes.

4 Q. And as part of your job, you were supposed to be
5 familiar with the types of transactions that were typically
6 conducted by a similarly-situated customer; is that right?

7 A. I was not expected to be an expert on every type of
8 business that the bank had as a client, so I don't -- I
9 could ask questions, but I wasn't expected to know
10 everything about every type of client.

11 Q. As part of your job, Ms. Pesch, being an anti-money
12 laundering analyst, you were supposed to be familiar with
13 the types of transactions typically conducted by
14 similarly-situated customers, correct?

15 A. If I wasn't familiar with it, I could ask questions, but
16 I did not know everything about every type of client the
17 bank had.

18 Q. In analyzing whether or not activity was potentially
19 suspicious, it would have been helpful in doing that to be
20 familiar with types of transactions that were typically
21 conducted by customers similar to the customer that you were
22 investigating; is that true?

23 A. It would have been helpful, yes.

24 Q. Go back to the Petters Company, Inc. We talked about
25 the Petters Company business just for a second yesterday.

Pesch - Cross

1 Do you remember that?

2 A. Yes.

3 Q. Are you aware of any customer at M&I Bank that was
4 similarly situated to the Petters Company, Inc.?

5 A. I don't remember.

6 Q. Let's talk for a second about money laundering. We're
7 going to stay on these two documents just for a moment. I'm
8 going to try to keep us on Exhibit 5 here.

9 Let's go to slide 12, which is Plaintiff's Exhibit
10 5, page 12. And do you see on the slide where it says,
11 "Money launderers 'clean' their 'dirty' money through:
12 Brokerage firms, banks, investment professionals"?

13 Do you see that?

14 A. Yes.

15 Q. And that was how the bank taught its personnel about
16 money laundering, right?

17 A. That was a piece of this training, yes.

18 Q. And the bank taught -- taught its personnel that money
19 laundering is the process of converting dirty money obtained
20 from illegal activities into assets that appear to be clean
21 or legitimate, right?

22 A. Yes.

23 Q. And that would mean what they do is they use the bank to
24 make the money look legitimate; is that correct?

25 A. That's one way it could be done.

1 Q. And making the money look -- for example, making the
2 money look legitimate would be turning that money into, for
3 example, purchases; is that right?

4 A. It could be.

5 Q. And purchases could be things like cars or houses; is
6 that right?

7 A. Yes.

8 Q. And the reason why the bank is teaching its personnel
9 about money laundering is because criminals use banks to
10 launder money, right?

11 A. That's one way of laundering money, yes.

12 Q. Please go real quickly to Plaintiff's Exhibit 5. Let's
13 go -- stay on 5. Let's go to slide 24. And this is what we
14 were just talking about, the process of integration. Is
15 that right?

16 A. Yes.

17 Q. And the process of integration is when a criminal uses
18 the bank to run its money through the bank to have it look
19 legitimate and have it come out through purchases; is that
20 right?

21 A. That sounds like the whole scope of money laundering.
22 Integration is just the last part.

23 Q. Describe the integration piece.

24 A. It's where you can no longer tell if the money is
25 legitimate or dirty and it's used for potentially normal

1 purchases, such as those listed.

2 Q. Sure. You have cars and real estate listed there,
3 right?

4 A. Yes.

5 Q. And then you see financial investments?

6 A. Yes.

7 Q. Describe how a money launderer would complete the
8 process of integration through financial investments.

9 A. Just as anyone else would. They would purchase an
10 investment.

11 Q. One of the ways that a criminal could do that is they
12 could take money and put it into other businesses, correct?

13 MS. MOMOH: Objection, calls for speculation.

14 THE COURT: Overruled. You may answer if you can.

15 THE WITNESS: Potentially.

16 BY MR. COLLYARD:

17 Q. And when you were looking for activity indicative of
18 money laundering or looking at suspicious activity, that's
19 one of the things that you would look for, right?

20 A. Yes.

21 Q. That would certainly be among the list, if a customer
22 was taking money and wiring it into other businesses,
23 correct?

24 A. Could you repeat your question?

25 Q. Sure. I said that would certainly be among the list, if

Pesch - Cross

1 a customer was taking money and wiring it into other
2 businesses, correct?

3 A. Sorry. That was building on an earlier question. Can
4 you put them together so I --

5 Q. Sure. When you're investigating and looking for money
6 laundering or suspicious activity, one of the things that
7 you would do is you would look to see if the customer was
8 taking money and wiring it into other businesses?

9 A. Not that necessarily. We were just looking for overall
10 suspicious activity.

11 Q. That would be one of the factors that could lead to
12 being indicative of suspicious activity?

13 A. That by itself would not necessarily be suspicious.
14 There would probably be other factors. Wiring money to
15 another business is not necessarily suspicious.

16 Q. Ms. Pesch, I'm just asking if that would be one of the
17 factors that you would be considering when you were look at
18 the transaction activity to determine whether or not it was
19 potentially suspicious.

20 MS. MOMOH: Objection, Your Honor, asked and
21 answered.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: Wiring money to another business is
24 a normal business transaction, so that by itself would not
25 be suspicious.

Pesch - Cross

1 BY MR. COLLYARD:

2 Q. Okay. Let's back up, then. If the customer was taking
3 money and wiring it to a different business that the
4 customer has, would that be one of the factors you would
5 determine as to whether or not there could be potentially
6 suspicious activity?

7 A. There could be a lot of legitimate reasons for that, so
8 that by itself would not be suspicious.

9 Q. What I'm asking, Ms. Pesch, if that's one of the things
10 that you would consider when you were looking at that type
11 of activity.

12 A. Sending money to a related business is not suspicious in
13 and of itself. So that's -- there would have to be other
14 factors.

15 Q. If there were large wires, for example, going from a
16 customer to a customer's other businesses, would that be one
17 factor that the Anti-Money Laundering Group would be
18 considering in determining whether the transaction activity
19 could potentially be suspicious?

20 A. Like I said, that by itself, transfers between related
21 companies, would not be suspicious. There would have to be
22 other factors.

23 Q. What would those other factors be?

24 A. It could be many varieties of things.

25 Q. Can you name any?

1 A. It really depends on the situation. People are free to
2 make their own choices and every alert in a case is
3 different.

4 Q. So is it your testimony that if you were investigating
5 transaction activity and you saw that the customer who you
6 were investigating was making wires to other businesses that
7 that customer had owned or was involved in, that is not
8 something that you would consider in your analysis as to
9 whether or not that activity was potentially suspicious?

10 MS. MOMOH: Objection, Your Honor,
11 mischaracterizes the testimony of the witness.

12 THE COURT: Overruled. You may answer the
13 question.

14 THE WITNESS: We would look at the transactions as
15 part of the alert, but, like I said, transfers between
16 related businesses is not necessarily suspicious.

17 BY MR. COLLYARD:

18 Q. And, Ms. Pesch, I'm not suggesting that that alone is
19 suspicious. What I am asking you, that would be one of the
20 factors that you would be looking into to consider whether
21 or not it's potentially suspicious?

22 A. No, transfers between related businesses are not
23 necessarily suspicious.

24 Q. Okay. Let's go to Plaintiff's Exhibit 4. We are going
25 to go to slide 21, it's Plaintiff's Exhibit 4, page 21.

Pesch - Cross

1 And it says up at the top, Ms. Pesch, "How is
2 Money Laundering Done?", and it gives a three-step process.
3 Do you see that?

4 A. Yes.

5 Q. Can you just describe what this slide is showing.

6 A. Placement, that's where the illegal funds would be put
7 into the financial system. In this case they show a person
8 with a suitcase full of cash running to the bank.

9 Then Step Two is "Layering. Funds are further
10 separated from the illegal activity." So it looks like they
11 have a number of potentially different ways of conducting
12 transactions.

13 And then three is integration, where the "Funds
14 re-enter the economy creating the appearance of legitimate
15 funds."

16 Q. And the integration piece is the part that we just
17 talked about where the bad guy, the criminal, would use the
18 money to buy things like cars and houses, right?

19 A. Yes.

20 Q. Can you add yachts to that list?

21 A. Sure.

22 Q. And this is how the bank taught its personnel about
23 money laundering?

24 A. This was part of the money laundering -- AML training.

25 Q. Stay on Exhibit 4, and let's go to slide 50. Are you

Pesch - Cross
1 there, Ms. Pesch?

2 A. Yes.

3 Q. Okay. It says at the top, "Summary of Key Points. Do
4 your part!" Do you see that?

5 A. Yes.

6 Q. It says, "Know your customer and understand their
7 activities." Do you see that?

8 A. Yes.

9 Q. And what is meant by "understand their activities," that
10 is talking about their business activities, correct?

11 A. I didn't create this material, so I'm not exactly sure
12 what the exact definition of what they meant by "understand"
13 was there.

14 Q. Well, Ms. Pesch, under the concept of "know your
15 customer," you agree that you understand your customer's
16 business activities, for example, right?

17 A. A reasonable understanding.

18 Q. And that would include what the business is?

19 A. Yes.

20 Q. What type of business the customer is in; is that right?

21 A. Yes.

22 Q. And it could also include, too, who the customer is
23 doing business with; is that right?

24 A. As part of understanding their business, potentially.

25 Q. And you agree, Ms. Pesch, that -- I'm sorry. Let me go

1 to the bottom or the next one. It says, "Be aware and
2 curious about interesting transaction activity. Discuss
3 identified unusual activity with your supervisor." Do you
4 see that?

5 A. Yes.

6 Q. Was the bank teaching its bank personnel that if they
7 came across something that might be unusual activity, that
8 they should escalate it?

9 A. Yes.

10 Q. That they should report it to a supervisor, for example?

11 A. It depends on the role of the employee.

12 Q. Well, you agree, Ms. Pesch, let's put it this way, that
13 what that means there is that if somebody believes there is
14 potentially a red flag, for example, they should escalate
15 that to a supervisor?

16 A. This says, "Discuss identified unusual activity with
17 your supervisor."

18 Q. I'm asking you a different question, Ms. Pesch. I'm
19 asking you if you agree that what that means is if somebody
20 believes there is potentially a red flag, they should
21 escalate that to a supervisor?

22 A. Not necessarily.

23 Q. Let's go back to your deposition, please.

24 MR. COLLYARD: We're going to go to page 58,
25 Counsel.

Pesch - Cross

1 BY MR. COLLYARD:

2 Q. And if you look, Ms. Pesch, on page 58, it's line 11. I
3 asked you the question: "Does that mean if somebody
4 believes that there's potentially a red flag, that they
5 should escalate that to their supervisor?" Do you see that?

6 A. Can I read a little before that for context, please?

7 Q. You may.

8 Are you ready?

9 A. Yes.

10 Q. Okay, Ms. Pesch, I asked you the question: "Does that
11 mean if somebody believes that there's potentially a red
12 flag, that they should escalate that to their supervisor?"
13 Do you see that?

14 A. Yes.

15 Q. And you answered: "Yes." Do you see that?

16 A. Yes.

17 Q. And that was truthful testimony at the time you gave it?

18 A. Yes.

19 Q. Let's stay on Plaintiff's Exhibit 4, and let's go to
20 slide 44. What I would like to do is talk about how the
21 bank taught its --

22 A. Sorry. Could you -- I missed the exhibit number.

23 Q. I'm sorry. It's Plaintiff's Exhibit 4. You're on it.

24 A. Okay.

25 Q. I can see. If you can go to slide 44, I want to talk

1 about how the bank would teach its personnel to look for
2 suspicious activity.

3 Are you there, Ms. Pesch?

4 A. Um-hmm.

5 Q. Okay. At the top -- I'm sorry. Was that a yes?

6 A. Yes.

7 Q. It reads up at the top, "Recognizing Suspicious
8 Activity." Do you see that?

9 A. Yes.

10 Q. And then the second bullet point, "What is 'interesting'
11 or 'unusual.' It just doesn't feel right to you." Do you
12 see that?

13 A. Yes.

14 Q. And you were trained, Ms. Pesch, that if something was
15 interesting or unusual, that you should look into it
16 further; is that right?

17 A. Yes.

18 Q. And the bank was teaching its personnel that if they
19 came across activity that was interesting or unusual, that
20 they should look into it further, correct?

21 A. At the time that this training material was created,
22 those were the terms that were used, yes.

23 Q. And activity that was interesting or unusual, that could
24 be an indicator that could -- that that activity could lead
25 to being suspicious; is that right?

Pesch - Cross

1 A. It could, yes.

2 Q. And these are certain tests that you would follow,
3 correct?

4 A. I would keep that in consideration.

5 Q. Are these -- would you follow these?

6 A. I would follow this, but I wouldn't call it a test.

7 Q. What would you call them? Concepts?

8 A. I would consider it something to keep in mind as you're
9 reviewing transaction activity.

10 Q. So do you agree or do you disagree, Ms. Pesch, that
11 these are certain tests that you would follow?

12 A. I don't know if I would use the word "test" today, but
13 it's something that we would consider when reviewing
14 transaction activity.

15 Q. Go back to your transcript, page 39. If you look on
16 page 39 at line 4, I asked you: "And these are just certain
17 tests that you would follow, right? If something didn't
18 feel right to you, you would look into it more; is that
19 right?" Do you see that?

20 A. Yes.

21 Q. And then you answered: "Correct." Is that right?

22 MS. MOMOH: Objection, Your Honor. Sidebar?

23 THE COURT: What's your objection?

24 MS. MOMOH: It's an objection that I had raised
25 yesterday, Your Honor, with respect to the use of the

1 deposition transcript, and I objected as well to that
2 earlier today, Your Honor.

3 THE COURT: We'll have a sidebar.

4 MS. MOMOH: Thank you.

5 THE COURT: Members of the jury, you may stand and
6 stretch and talk among yourselves if you would like.

7 **(At sidebar)**

8 MS. MOMOH: I will be brief on this. It's just
9 the fact that there's an objection that was raised at the
10 time. So I can object. I'm trying not to. I want the
11 examination to proceed as it needs to, but it's just
12 challenging when he is asking her questions that were
13 already objected to during the deposition, and I just don't
14 want it to appear to the jurors that -- I just kind of --

15 THE COURT: It's fine that you objected to them
16 during the deposition. We are in trial now. If it's an
17 objectionable question, then I would rule on it.

18 MS. MOMOH: Yes. Understood.

19 THE COURT: So if you need to ask her whether or
20 not you objected, if that's relevant, at the deposition when
21 you -- or when you take up her examination, you may do so.

22 MS. MOMOH: Understood. Thank you. So,
23 Your Honor? So with that, the objection is withdrawn.

24 THE COURT: Okay.

25 **(In open court)**

1 THE COURT: Would you repeat the question. There
2 was a question pending, I believe.

3 MR. COLLYARD: I'm sorry, Your Honor? I did not
4 hear that at all.

5 THE COURT: I said would you repeat the question.
6 I believe there was a question pending?

7 MR. COLLYARD: Yes. Thank you.

8 BY MR. COLLYARD:

9 Q. I am going to go back, Ms. Pesch, on page 39, line 4,
10 and I am going to read it because the question didn't fully
11 come out.

12 I asked you: "And these are just certain tests
13 that you would follow, right? If something didn't feel
14 right to you, you would look into it more; is that right?"
15 Do you see that?

16 A. Yes.

17 Q. And you answered: "Correct." Is that right?

18 A. Yes.

19 Q. And, Ms. Pesch, just so we're clear here, activity
20 doesn't actually need to be suspicious for you to be looking
21 into it further, correct?

22 A. Technically all the activity that we receive is not
23 suspicious until we do our analysis.

24 Q. And these indicators of if it's interesting or unusual,
25 those are the triggers that will lead you to look into it

1 more; is that right?

2 A. They could.

3 Q. Well, they would, right?

4 A. Like I said, that's one thing we would consider.

5 Q. And if we go to the next bullet, it says, "Focus more on
6 the activity than on the customer." Do you see that?

7 A. Yes.

8 Q. And you understood that you were supposed to do that,
9 right?

10 A. Yes.

11 Q. And you understood that the bank was teaching its
12 personnel to focus on the actual activity, not on who the
13 customer is, for example; is that true?

14 A. That's what's in this training.

15 Q. Because really what you're doing is you're analyzing the
16 transaction activity; is that correct?

17 A. That's a part of what we did, yes.

18 Q. And this concept here, "Focus more on the activity than
19 on the customer," that goes back to the best customer
20 syndrome, right?

21 A. Yes.

22 Q. You focus on the customer's activity instead of focusing
23 on who the customer actually is, correct?

24 A. Yes.

25 Q. Let's stay on Plaintiff's Exhibit 4, and let's go to

1 slide 47. At the top it reads, "Interacting with the
2 Customer." Do you see that?

3 A. Yes.

4 Q. And then it says, "It is appropriate to discuss the
5 unusual activity with the customer to determine whether
6 there is a legitimate business purpose for the activity."
7 Right?

8 A. Yes.

9 Q. What that -- is what that is talking about is if you had
10 any question or you had any concern that the activity was
11 for a legitimate business purpose, you could actually ask
12 the customer, correct?

13 A. This went out to all bank personnel. All bank personnel
14 wouldn't personally contact a customer, but we could request
15 that the customer be questioned.

16 Q. Sure. So, for example, if you were looking at activity
17 and you wanted an answer by the customer as to whether or
18 not certain activity was for a legitimate business purpose,
19 you could contact the customer relationship manager or the
20 business banker and have them ask, correct?

21 A. Yes.

22 Q. And they would -- they could certainly do that, right?

23 A. Yes.

24 Q. And if that business banker or that customer
25 relationship manager, if they themselves saw something or

1 had a question as to whether or not the activity was for a
2 legitimate business purpose, they could themselves ask the
3 customer, right?

4 A. Yes.

5 Q. And there was a system in place at the bank where let's
6 say a business banker or a customer relationship manager did
7 that and the answer that they got back from the customer led
8 them to think that there was something unusual or something
9 interesting about that activity, that customer relationship
10 manager could provide a form that would go to the Anti-Money
11 Laundering Group; is that right?

12 A. Yes.

13 Q. And that's called a Suspicious Activity Log?

14 A. Yes.

15 Q. And that would be the process for those kind of
16 front-facing customer people to identify potentially
17 suspicious activity to the Anti-Money Laundering Group for
18 the Anti-Money Laundering Group to then go and investigate;
19 is that right?

20 A. Yes.

21 Q. And stay on this concept for just a second, Ms. Pesch.
22 If that happened, let's say the customer -- let's say the
23 business banker or the customer relationship manager had a
24 question about whether or not there was a legitimate
25 business purpose and asked the customer about it and

1 reported information back to the Anti-Money Laundering
2 Group, okay?

3 A. Okay.

4 Q. The Anti-Money Laundering Group would then make a
5 decision as to whether or not that potential -- that
6 activity could be for a legitimate business purpose or not?

7 A. After reviewing it, yes.

8 Q. And in reviewing it, you would actually look into it and
9 research it, correct?

10 A. Yes.

11 Q. And the phrase "legitimate business purpose," that's a
12 concept that was talked about at the bank; is that right?

13 A. Yes.

14 Q. And determining whether something is for a legitimate
15 business purpose is one of the things that you would
16 consider when you were investigating and reviewing activity
17 on an account, correct?

18 A. That's something we would consider, yes.

19 Q. And when you were looking at, for example, the flow of
20 funds in and out of an account, you would be looking to see
21 if there was a legitimate business purpose for that, right?

22 A. Yes.

23 Q. So, for example, one of the things that could trigger
24 for potentially suspicious activity would be checks, right?

25 A. Potentially.

1 Q. You, yourself, have reviewed and investigated checks on
2 an account to determine whether or not they were potentially
3 suspicious, right?

4 A. Yes.

5 Q. You'd actually review the checks and look at them and
6 see if you could figure out what the purpose of the checks
7 was?

8 A. Yes.

9 Q. And the reason why you were doing that is you were
10 trying to figure out if there was a legitimate business
11 purpose for the check, right?

12 A. We were trying to identify potentially suspicious
13 activity.

14 Q. I understand. But as part of that, you were trying to
15 figure out whether there was a legitimate business purpose
16 for the checks that you were investigating, correct?

17 A. That's one thing we would consider.

18 Q. That would certainly go into your analysis, correct?

19 A. Can you clarify what you mean?

20 Q. Sure. When you're reviewing checks to determine whether
21 or not they're potentially suspicious, one of the things
22 that you would be considering in making your determination
23 would be is there a legitimate business purpose for the
24 check?

25 A. If it didn't look like there was a legitimate -- if

1 something didn't look right, then we would include that in
2 our review.

3 Q. And I'm asking -- I'm sorry, Ms. Pesch. I'm asking you
4 just a little bit more specifically. In doing an
5 analysis -- and you have done this in the past -- right? --
6 where you have tried to look at checks to see if there was a
7 legitimate business purpose for them?

8 A. Yes, I've done that.

9 Q. Now, let's -- at the end of looking at -- let's go back.

10 At the end of -- and I am talking just high level.
11 At the end of doing your analysis as to whether or not
12 there's potentially suspicious activity on an account, if
13 you had reason to suspect that that activity was suspicious,
14 you would take action on that activity, right?

15 A. Yes.

16 Q. And the test wasn't that you actually had to know that
17 it was suspicious, right?

18 A. We had to suspect.

19 Q. I'm asking you just a little bit different. I'll make
20 it a little more broad. The test -- you didn't have to
21 actually know or believe that the activity was actually
22 suspicious, correct?

23 A. Correct.

24 Q. If you just had reason to suspect that it was
25 suspicious, that would be enough to trigger action; is that

1 right?

2 A. Yes.

3 Q. And one of the things you could do, if that was the
4 case, is you could -- could you stop the activity on the
5 account?

6 A. I personally could not.

7 Q. Okay. Fair enough.

8 Could you recommend that the activity be stopped
9 on an account?

10 A. That wouldn't have been a decision or a recommendation
11 made by me.

12 Q. Do you understand that the bank has the ability to stop
13 activity on an account?

14 A. Yes.

15 Q. And they can do that at any time, correct?

16 MS. MOMOH: Objection, Your Honor, lack of
17 foundation.

18 THE COURT: Overruled. You may answer if you can.

19 THE WITNESS: I know it's a possibility. I don't
20 know what the rules are about that.

21 BY MR. COLLYARD:

22 Q. Fair enough.

23 Now, going back to the Anti-Money Laundering
24 Group, for example, if the Anti-Money Laundering Group or
25 you as an AML analyst came across activity that you had

1 reason to suspect was potentially suspicious, one of the
2 things that you could do is recommend that a report be filed
3 to the federal government, correct?

4 A. Could you repeat your question?

5 Q. Sure. If when you were reviewing or analyzing
6 transaction activity, meaning money going in and money going
7 out of the account, for potentially suspicious activity, and
8 you had reason to suspect that that activity was potentially
9 suspicious, one of the things you would do is recommend or
10 suggest that a report be filed with the federal government?

11 A. Yes.

12 Q. And that report is called a Suspicious Activity Report,
13 correct?

14 A. Yes.

15 Q. And that's also called a SAR, right?

16 A. Yes.

17 Q. And SAR is up on the screen. It's S-A-R, right?

18 A. Yes.

19 Q. Go -- sorry. Let's go to Plaintiff's Exhibit 5, and
20 we'll just talk real quickly about SARs. We are on
21 Plaintiff's Exhibit 5, page 13, slide 13. You see at the
22 top, Ms. Pesch, it says, "Financial Crimes Enforcement
23 Network (FinCEN)." Do you see that?

24 A. Yes.

25 Q. You know who FinCEN is; right?

1 A. Yes.

2 Q. And who is FinCEN?

3 A. The Financial Crimes Enforcement Network.

4 Q. What do they do?

5 A. They receive SARs.

6 Q. So if we just back up, if the bank has reason to suspect
7 that there's suspicious activity on an account and they
8 determine to file a Suspicious Activity Report with the
9 federal government, they file it with FinCEN; is that right?

10 A. That's where it goes.

11 Q. And then FinCEN takes -- do you know what FinCEN does
12 when it gets a Suspicious Activity Report?

13 A. I could not speak to that.

14 Q. Do you have any understanding of that process at all?

15 A. I have some. What they do today I can't say.

16 Q. Well, let's go with a general understanding. Is it your
17 general understanding that what FinCEN does is they receive
18 Suspicious Activity Reports, and then FinCEN does an
19 analysis onto it whether they need to work with other
20 authorities to bring them involved, for example; is that
21 right?

22 A. I know the SARs can be made available to other
23 governmental bodies. I don't know the process for how that
24 happens.

25 Q. Okay. This first bullet, if we just take a look at

1 that, it says, "FinCEN has worked to maximize information
2 sharing among law enforcement agencies and its other
3 partners in the regulatory and financial communities to
4 fight the complex problem of money laundering." Do you see
5 that?

6 A. Yes.

7 Q. Do you have a general understanding, Ms. Pesch, that
8 what that means or what FinCEN does, for example, is it
9 could take the Suspicious Activity Report, make an analysis,
10 and then share that information with other governmental
11 authorities like the U.S. Attorney's Office, for example?

12 MS. MOMOH: Objection, Your Honor, lack of
13 foundation, calls for speculation.

14 THE COURT: Overruled. You may answer if you
15 know.

16 THE WITNESS: Like I said before, I don't know how
17 FinCEN works. I just know that after the SARs are filed,
18 they can be made available to other governmental agencies.

19 BY MR. COLLYARD:

20 Q. In your work as an anti-money laundering analyst, part
21 of your role was to recommend whether a SAR be filed; is
22 that right?

23 A. Yes.

24 Q. And there is committees at the bank that actually
25 determine whether a Suspicious Activity Report should be

1 filed with FinCEN; is that right?

2 A. Yes.

3 Q. And you would participate in those committees, right?

4 A. I would present cases that I wrote at that committee.

5 Q. Let's talk about that. You would present cases that you
6 wrote?

7 A. Yes.

8 Q. And what you mean by that is after doing your
9 investigation/analysis to determine whether or not something
10 was potentially suspicious, you would make a determination
11 as to whether there should be a recommendation that a SAR
12 should be filed; fair enough?

13 A. I would make a recommendation, yes.

14 Q. And you called it a case; is that right?

15 A. Yes.

16 Q. And if you made the recommendation, then you would open
17 up what you're calling a case. Do I have that right?

18 A. Could you repeat that?

19 Q. Yeah. If you were making a recommendation that a SAR be
20 filed, you would open up what you call a case?

21 A. I would have opened the case first and then, after my
22 research, made a recommendation.

23 Q. Okay. So if you're determining whether there was reason
24 to suspect that there was suspicious activity and you
25 believed that there was, then you would open up a case; is

Pesch - Cross
1 that right?

2 MS. MOMOH: Objection, Your Honor,
3 mischaracterizes the testimony of the witness.

4 THE COURT: Overruled. You may answer if that's
5 correct or not.

6 THE WITNESS: Can you repeat it one more time?

7 BY MR. COLLYARD:

8 Q. Sure. I'm trying to figure out, Ms. Pesch, that when
9 you've -- let me back way up. Okay.

10 So if you've reviewed transaction activity and you
11 have determined that there's reason to suspect that that
12 activity is potentially suspicious or is suspicious, the
13 next step in your process would be to open up a case?

14 A. Yes.

15 Q. And you would take the case and you would do further
16 investigation, maybe?

17 A. Yes.

18 Q. Okay. And once you were done completing your case, then
19 you would recommend that a SAR be filed; is that also true?

20 A. I could recommend that a SAR be filed or a SAR not be
21 filed.

22 Q. Sure. Okay. So one of the things that after doing your
23 case, is you could recommend, if you thought it was
24 appropriate, that a SAR be filed, true?

25 A. Yes.

1 Q. Now, now that we're there, does that go to a committee?

2 A. Yes.

3 Q. Is that called a SAR committee?

4 A. It was the SAR Review Committee.

5 Q. And you were part of the SAR -- you would participate in
6 the SAR Review Committee?

7 A. I was not part of the committee, but I would present the
8 cases I wrote to the committee.

9 Q. And what you would do is you would justify whether or
10 not the SAR should be filed?

11 A. I would present my case, which included my
12 recommendation at the end.

13 Q. And your recommendation would be based on your research
14 and your analysis that you would have done to reach the
15 conclusion that there was at least reason to suspect that
16 that activity was suspicious?

17 A. Yes.

18 Q. Now, let's -- if the committee agrees with you that a
19 SAR should be filed, what happens next?

20 A. Then the lead analyst would file the SAR.

21 Q. And the SAR would go to FinCEN?

22 A. Yes.

23 Q. What do you know happens then after it goes to FinCEN?

24 A. I don't know the process after that.

25 Q. Is there any interaction between FinCEN and the

1 Anti-Money Laundering Group after the SAR has been filed?

2 A. I understand that law enforcement could contact the bank
3 about the SAR.

4 Q. So, for example, if FinCEN forwarded -- worked with the
5 United States Attorney's Office -- have you ever been
6 involved in an instance where FinCEN has worked with the
7 United States Attorney's Office and the United States
8 Attorney's Office has reached back to the bank for any
9 questions that they had?

10 A. I don't remember personally being involved in that
11 situation.

12 Q. Are you aware of situations where the bank was involved
13 in that type of situation?

14 A. I know law enforcement reached out to the bank about
15 SARs that had been written. I don't remember which groups.

16 Q. And why is the bank filing a Suspicious Activity Report
17 with FinCEN? What's the purpose of that?

18 A. There's a regulatory requirement.

19 Q. The bank is -- I'm sorry.

20 A. Oh. There's a regulatory requirement.

21 Q. The bank is required to do it?

22 A. Yes.

23 Q. And that's the bank's responsibility?

24 A. Yes.

25 Q. All right. I think we can put 4 and 5 aside, at least

Pesch - Cross
1 for now.

2 Let's go to Plaintiff's Exhibit 180 now.

3 A. 1-8-0?

4 Q. Yes.

5 And if you remember, Ms. Pesch, I asked you about
6 this exhibit yesterday. Do you recall that?

7 A. Yes.

8 Q. And yesterday we had talked about how this described the
9 responsibility of the Anti-Money Laundering Group to detect,
10 review, and investigate suspicious activity. Do you
11 remember that?

12 A. Sorry. Could you repeat that?

13 Q. Sure. Yesterday we had talked about how this described
14 the responsibility of the Anti-Money Laundering Group to
15 detect, review, and investigate suspicious activity. Do you
16 remember that?

17 A. I remember discussing this. I don't remember the exact
18 questions you asked me.

19 Q. Do you also remember that we talked a little bit about
20 Searchspace and wires?

21 A. Yes.

22 Q. If you go to page 7 of this exhibit, there's a Heading

23 G. It says, "Searchspace Alerts." Do you see that?

24 A. Yes.

25 Q. And it reads, "M&I has deployed software from

1 Searchspace to serve as the primary automated tool for the
2 monitoring of suspicious customer transactions." Did I read
3 that correctly?

4 A. Yes.

5 Q. And then it says, "In the first phase of implementation,
6 the following bank data is fed into Searchspace for
7 monitoring." Do you see that?

8 A. Yes.

9 Q. And you understand what it means for monitoring, right?

10 A. That it was included within Searchspace, yes.

11 Q. And it lists the activity that's included into
12 Searchspace, right?

13 A. Yes.

14 Q. And the second -- I'm sorry. We'll just start at the
15 top. The first piece of data that's entered into
16 Searchspace is "All transactions posted to all deposit
17 accounts." Do you see that?

18 A. Yes.

19 Q. What is meant by "deposit accounts"?

20 A. Like a checking or savings account.

21 Q. That's what the Petters Company, Inc. account was,
22 right?

23 A. Yes.

24 Q. You called it a depository account. Is that the
25 technical term for it?

Pesch - Cross

1 A. Yes.

2 Q. And that just basically means it's a checking account?

3 A. An account you can deposit funds into, yes.

4 Q. When you're saying you can deposit funds in it, because
5 you're talking about like how I have a checking account and
6 you have a checking account, you can also make wires into an
7 account or wire out of an account; is that right?

8 A. Can you repeat that?

9 Q. Sure. Just like -- do you have a checking account?

10 A. Yes.

11 Q. I still do too. So in my checking account, I can write
12 checks out of the account, right?

13 A. I'm assuming you can do that, yes.

14 Q. Still do that. And I can make wires. I could wire
15 money out of the account or I could receive a wire into an
16 account, right?

17 A. I don't know where your bank is. I don't know what the
18 rules are for your account, but, in theory, you could do
19 that out of an account.

20 Q. And that same exact thing happened with Petters Company,
21 Inc., right?

22 A. They wired money into your account?

23 Q. No. I'm sorry.

24 (Laughter)

25 BY MR. COLLYARD:

Pesch - Cross

1 Q. I'm not being clear. Yeah, they definitely did not, but
2 let me be clear. Okay?

3 What I'm trying to do is just establish,
4 Ms. Pesch, that the Petters Company, Inc. account, it's
5 called a depository account, and I'm trying to get rid of
6 the fancy names and I am just trying to understand, that's
7 just a checking account?

8 A. They had a checking account, yes.

9 Q. And as part of that checking account, I'm just trying to
10 understand that checks could be written out of the account,
11 right?

12 A. Yes.

13 Q. And it could accept wires; is that right?

14 A. I don't remember what all of the rules were for accounts
15 at M&I, but they could potentially, I believe, accept wires.

16 Q. And I'm sorry. I'm talking about the Petters Company,
17 Inc. account. You know that the Petters Company, Inc.
18 account received billions of dollars of wires, right?

19 A. I know they received wires in their account, yes.

20 Q. And you know that billions was dollars were wired out of
21 that account too, right?

22 A. I know a lot of money was wired out of that account. I
23 don't know the exact total.

24 Q. Do you agree that billions of dollars is a lot of money?

25 A. Yes.

1 Q. All right. Go back to this. So I think I got us all
2 messed up on deposit accounts. Let's go to the next bullet.
3 All wire transfer activity is fed into Searchspace. Do you
4 see that?

5 A. Yes. I see that it says that.

6 Q. And that's what was supposed to be being fed into
7 Searchspace; do you agree?

8 A. I was not involved with setting up Searchspace. I can
9 only say what this says, and that says all wire transaction
10 activity was fed into Searchspace.

11 Q. Fair enough.

12 Let's talk about -- let's go back to, then -- I
13 want to talk about transaction activity that is fed into
14 Searchspace. And transaction activity is money going in and
15 out of the account; is that right?

16 A. It could be.

17 Q. And, again, that could include wires?

18 A. Yes.

19 Q. And it could include checks, just like what we've been
20 talking about, right?

21 A. Yes.

22 Q. And when the anti-money laundering analysts were
23 investigating alerts in Searchspace, they had copies, for
24 example, of bank statements, right?

25 A. It was something that could be pulled, but we didn't

1 automatically have that.

2 Q. I'm just asking if they had copies, if that was an
3 availability?

4 A. They were available.

5 Q. Let me ask you this way: The anti-money laundering
6 analysts, when they're investigating potentially suspicious
7 activity in Searchspace, they would have copies of the bank
8 statements so you could see everything that was going in and
9 out of the account?

10 A. The bank statements were not included in Searchspace.

11 Q. They would be in addition to Searchspace?

12 A. They were not added to Searchspace.

13 Q. Did the anti-money laundering analysts also have copies
14 of bank statements when they were analyzing transaction
15 activity?

16 A. They were available, but we did not automatically have
17 them.

18 Q. Okay. But they were available for you to get, right?

19 A. Yes.

20 Q. And what that did -- what bank statements do is they
21 make -- they allow for you to see everything that was going
22 in and out of the account; is that right?

23 A. They show the debits and credits to the account.

24 Q. Okay. So an analyst has the information available in
25 Searchspace, which is all wire transaction activity,

Pesch - Cross
1 correct?

2 A. Sorry. Can you repeat that?

3 Q. Yes. The anti-money laundering analyst in Searchspace,
4 they have the transaction activity available to them, which
5 includes all wire transfer activity, correct?

6 A. Yes.

7 Q. And then -- just give me one second. And then in
8 addition to that, they had the ability to get bank
9 statements, right?

10 A. Yes.

11 Q. And the analysts would have copies of the bank
12 statements so they could see everything that was going in
13 and out of the account, if they so wanted those statements?

14 A. If the statements were pulled, yes, they would be able
15 to review the activity in the account.

16 Q. And the statements we're talking about, if we go back to
17 you and me, it's just like what we would have, for example,
18 on a credit card statement, right?

19 A. It's been a long time since I've seen an M&I Bank
20 statement, but I believe it showed all of the account
21 activity.

22 Q. It would show who the wires were coming in from and it
23 would show any activity on the account, right?

24 A. I do not remember it showing originators of wires, just
25 that a wire showed up on the account.

Pesch - Cross

1 Q. All right, Ms. Pesch. Do you have any reason to
2 disagree with me that it would also show the incoming wires?

3 A. The wires would appear in the bank statement, I believe.

4 Q. Okay. So the AML analysts would have access to those
5 incoming wires, right? Or I'm sorry, the activity that
6 showed the money coming into the account and information
7 about that money coming into the account, the AML analysts
8 would have access to that through the bank statements,
9 correct?

10 A. They would have access to the information about the
11 transactions that was listed in Searchspace and in the bank
12 statement.

13 Q. Yes. And the bank statements would show, for example,
14 the information about the money going in and out of the
15 account, correct?

16 A. It would show the transaction type, the value, and the
17 date. Beyond that, I don't remember like originator
18 information about the wire being in statements.

19 Q. And the bank statements that the AML analysts had access
20 to, would that include anything other than wires or checks?

21 A. Like I said, it's been a long time since I've seen an
22 M&I Bank statement, but potentially there could be other
23 transaction types in there. It depends on the activity in
24 the account.

25 Q. Do you agree, Ms. Pesch, that if the analysts was

1 looking at the bank statements, that they would see
2 everything that was going on in the account?

3 A. What do you mean everything going on in the account?

4 Q. I mean everything. They could see the account activity.

5 A. They would see the transactions.

6 Q. And that would include the money going in and out of the
7 account, correct?

8 A. Yes.

9 Q. In going back to Searchspace, Ms. Pesch, would
10 Searchspace include the checks written on an account?

11 A. Yes.

12 Q. And so Searchspace would actually have the checks that
13 are being written on an account and checks being deposited
14 into an account; is that right?

15 A. Yes.

16 Q. And you could actually use Searchspace to go in and see
17 those checks?

18 A. We could not see images of the checks in Searchspace.

19 Q. So how would you have access to the checks, then?

20 A. We had to access them through a different system.

21 Q. And what's that called?

22 A. I don't remember the name of the system.

23 Q. So what would Searchspace tell you about the checks?

24 A. I remember it telling us the date, the transaction type,
25 and the amount.

1 Q. And then from there you could go and get the actual
2 checks and look at the actual checks; is that right?

3 A. Yes.

4 Q. And when you were reviewing alerts that were created,
5 let's say, for incoming wires in Searchspace, you would
6 review -- you would review the incoming wires for sure and
7 anything else that you determined you needed to understand
8 the activity, right?

9 A. Could you clarify what time you're talking about?

10 Q. Yeah. So let's go back to -- I'm sorry. Let's go back
11 to 2005 to 2008. Okay? And you are reviewing alerts for
12 incoming wires, for example. Are you with me?

13 A. Um-hmm.

14 Q. If you were doing that, you would review the incoming
15 wires for sure and anything else that you determined you
16 needed to understand the activity; is that right?

17 A. Yes.

18 Q. And so you're reviewing the internal wires, and when
19 you're doing that, you're trying to make a decision as to,
20 do I need to know more about this, do I need to look into
21 this further, do I need to get any more information to make
22 my determination or do my analysis; is that true?

23 A. What do you mean by "internal wires"?

24 Q. I'm sorry. Incoming wires.

25 A. Could you repeat your question?

1 Q. Sure. When you're looking at incoming wires and you're
2 doing your analysis to see if those wires are potentially
3 suspicious, you're also thinking about is there any other
4 information that I need to be looking at to make my
5 determination as to whether these incoming wires are
6 potentially suspicious?

7 A. Sorry. Could you repeat that one more time? That was
8 very long.

9 Q. Okay. Sorry. Let me do it this way: When you were
10 investigating the incoming wires to determine whether or not
11 they were potentially suspicious, as you were doing that and
12 thinking about it, you would also make a determination as to
13 whether or not you needed to know or wanted to see any
14 additional information to be able to analyze whether those
15 incoming wires were potentially suspicious?

16 A. Yes.

17 Q. You mentioned yesterday something about whether wires
18 were populated in Searchspace. Is that right?

19 A. Yes.

20 Q. And assuming the data was populated, the Searchspace
21 system would include the name of the sender and the
22 recipient of a wire; is that right?

23 A. I don't remember the exact wording that I used, but it
24 had to do with how the data from the wire was populated and
25 showed up in Searchspace.

1 Q. And if it was populated, that would include that
2 information, correct?

3 A. If it was populated correctly.

4 Q. For example, assuming the data was populated correctly,
5 it would include the date of the wire; is that right?

6 A. Yes.

7 Q. And assuming the data was populated correctly, it also
8 included the amount of the wire; is that right?

9 A. Yes.

10 Q. And it would also include the name of the sender and the
11 recipient of the wire; is that true?

12 A. I believe so.

13 Q. And the data that was populated in Searchspace, it was
14 populated -- the default was it was populated; is that true?
15 Is that a fair way of saying it?

16 A. Most of the data carried through and populated into the
17 correct fields.

18 Q. And on the Petters Company, Inc. account, for example,
19 Ms. Pesch, the data in Searchspace was populated, right?

20 A. I don't remember all the data and the transactions and
21 all the alerts, so I couldn't make a general statement about
22 that.

23 Q. That's fair. You have no reason to suggest or believe
24 that the incoming -- the data in Searchspace for the Petters
25 Company, Inc. account was not populated?

Pesch - Cross

1 A. When it would happen, it would have to do -- when there
2 were issues, it had to do with individual wires. It wasn't
3 for entire accounts. So there's the possibility that there
4 were wires that weren't filled out correctly on the wire
5 form where you didn't receive 100 percent of the information
6 in Searchspace.

7 Q. And I get that, and what I'm asking is: You have no
8 reason to believe that that happened for any particular wire
9 on the Petters Company, Inc. account; is that right?

10 A. I don't remember the data. For the amount of
11 transaction activity they had, I can't say for sure whether
12 all of the data carried through 100 percent correctly.

13 Q. You said the amount of transaction data that they had?

14 A. There were a lot of wires in the account.

15 Q. There was a lot of wires, and there was a lot of value
16 of wires going in and out of the account, right?

17 A. Yes.

18 Q. And so all I'm trying to do, Ms. Pesch, is figure out if
19 you have any basis or if you actually have any reason to say
20 that any of those wires, even though I know it's enormous,
21 if any of those wires were not populated on the Petters
22 Company, Inc. account?

23 A. I can't say based on -- I don't have the activity in
24 front of me, so I could not make a comment on that.

25 Q. I appreciate that.

MR. COLLYARD: I want to turn just real quickly to a new exhibit that has not been offered into evidence already, Your Honor. Plaintiff's Exhibit 178.

BY MR. COLLYARD:

Q. Are you there, Ms. Pesch?

A. I have 178 up.

Q. If you could just kind of flip through it and tell me if you understand this to be your personnel file at M&I Bank.

(Witness reviews document)

BY MR. COLLYARD:

Q. And I will help you out. I know you've got a lot of pages there. Let me try to help you out. If you can go to page 65, for example, and just take a look at that; and even if you look at page 64, you will see a signature.

(Witness reviews document)

BY MR. COLLYARD:

Q. Is that your signature on page 64, Ms. Pesch?

A. Yes.

Q. And then we can do another one too. If you go to page 72, is that your signature on page 72?

A. Yes.

Q. Does this look like it's your personnel file at M&I Bank?

A. I never saw my H and R -- or my human resources file, so I couldn't say what the file looked like, but these are

Pesch - Cross
1 documents about me.

2 Q. Right. And you signed them, right?

3 A. Yes.

4 Q. So you saw them?

5 A. I don't remember them, but it appears that I saw them
6 because I signed them.

7 MR. COLLYARD: Your Honor, offer Plaintiff's
8 Exhibit 178.

9 MS. MOMOH: No objection, Your Honor.

10 THE COURT: Exhibit 178 is received.

11 BY MR. COLLYARD:

12 Q. Ms. Pesch, I just want to go through a few of these just
13 real quickly. If we go to page 65, we are going to do these
14 kind of out of order.

15 I'm sorry, Ms. Pesch. Are you at page 65?

16 A. Yes.

17 Q. If we look up at the top, it says, "Time Frame Covered,"
18 and it gives the January of 2008 to December of 2008 time
19 period. Do you see that?

20 A. Yes.

21 Q. And then over to the left it lists, "Employee Name." It
22 says, "Mary Pesch." Do you see that?

23 A. Yes.

24 Q. I guess up at the top it reads, "Performance Review
25 Form." Do you see that?

1 A. Yes.

2 Q. All right. If you look down below, we're going to go to
3 the middle -- I am going to take you to the middle of the
4 page where it says procedure -- I'm sorry, "Produces work
5 that is accurate and thorough." I am going to highlight
6 that underlined paragraph. I'm going to take you to it
7 looks like the third sentence, and it reads, "Mary has been
8 given some of our very complex alerts and has done an
9 excellent job with them. She has created very complex
10 flowcharts to explain funds going in and out. She does not
11 stop researching until she has found information to resolve
12 her questions." Do you see that?

13 A. Yes.

14 Q. On the complex flowcharts, do you recall that when you
15 were analyzing or researching or looking into potentially
16 suspicious activity on an account, you would do complex
17 flowcharts mapping out the money going in and the money
18 going out of an account, for example?

19 MS. MOMOH: Objection, Your Honor, vague as to
20 time.

21 THE COURT: Overruled. You may answer.

22 THE WITNESS: There were a few situations that I
23 did that. It was not my general practice to do that.

24 BY MR. COLLYARD:

25 Q. It was your general practice to look at the money going

1 in and out of the account if the wires were alerting for
2 incoming and outgoing wires, right?

3 A. Yes.

4 Q. And we talked about that yesterday, that's called the
5 flow of the funds, right?

6 A. Yes.

7 Q. And flow of the funds -- understanding the flow of the
8 funds is important to understanding whether or not there's
9 potentially suspicious activity on an account, correct?

10 A. What do you mean by "understanding"?

11 Q. Understanding the flow of the fund. You know what I
12 mean by "understanding the flow of the funds," don't you?

13 THE COURT: Counsel.

14 MR. COLLYARD: I'm sorry. I'm sorry. Let me --

15 THE COURT: The question is argumentative.

16 MR. COLLYARD: Withdrawn, Your Honor.

17 BY MR. COLLYARD:

18 Q. Sorry. Flow of funds, do you understand what I mean by
19 "flow of funds"?

20 A. Yes.

21 Q. And do I have it correctly that what that means is money
22 going in and money going out of the account?

23 A. Yes.

24 Q. And when you were researching or analyzing the money
25 going in and the money going out of the account, for example

1 you would look to determine who the money was coming in for
2 and for what purposes, correct?

3 A. We would look at who was -- where it was coming from,
4 but like I said yesterday, we didn't always have the
5 information about the purpose.

6 Q. In the past you have looked to see who the money was
7 coming in from and for what purpose, right?

8 A. When it was available, if it was available, that was
9 something that we would look at.

10 Q. And you actually have done that in the past, right?

11 A. I have.

12 Q. Okay. And then for the money going out of the account,
13 same thing, you have looked to see who the money was going
14 to and to try to figure out what the use of those funds
15 were; is that fair enough?

16 A. Again, if the purpose information was available, then we
17 would include that.

18 Q. And you've done that in the past, though, right?

19 A. Yes.

20 Q. And what this is saying is in doing that and
21 understanding the flow of the funds, you've actually made
22 complex flowcharts to be able to explain that type of
23 situation, right?

24 A. Yes, I have.

25 Q. So this was 2008. If we go to the next page, please,

Pesch - Cross

1 Ms. Pesch, towards the top, where it says,

2 "Comments/Examples." Do you see that?

3 A. No.

4 Q. It's at the bottom. It's that last section on there
5 that's up on your screen where it says, "Mary does a good
6 job of preventing [sic] in SAR review."

7 A. Just a second. I'm trying to find it on here.

8 Q. I'm sorry. Let's do this: Let's just go to the top
9 where it says, "Problem Solving/Decision." Right at the
10 top, do you see that?

11 A. Yes.

12 Q. Let's just start there. And then do you see the
13 underlined portion?

14 A. Yes.

15 Q. It says, "Mary uses good judgment in her decisionmaking.
16 Her research and analysis skills are strong and reinforce
17 her decisions." Do you see that?

18 A. Yes.

19 Q. And then it reads, "She is able to back up her decisions
20 with appropriate research and documentation." Do you see
21 that?

22 A. Yes.

23 Q. And when you were an anti-money laundering analyst, you
24 would document your research and your reasonings for your
25 conclusions; is that true?

1 A. Based on the requirements at the time for the type of
2 activity we were reviewing, whether it was an alert or a
3 case, yes, according to the procedures from that time.

4 Q. And then down below, that next portion where it says,
5 "Mary does a good job," do you see that?

6 A. Yes.

7 Q. And that, "Mary does a good job at presenting in SAR
8 review." Is that what we talked about earlier when you
9 would do your case and then you would go and present your
10 case to the SAR committee; is that right?

11 A. Yes.

12 Q. And during that process, you would have articulated or
13 documented your reasoning and explanation for your
14 recommendation that the activity was suspicious; is that
15 true?

16 A. Yes.

17 Q. Let's go to page 69, please, and if we look at the top
18 in the upper right-hand corner again, Ms. Pesch, this one
19 says that it's the time period from January of 2007 through
20 December of 2007. Do you see that?

21 A. Yes.

22 Q. And then if we go down towards the middle of the page
23 again on, "Produces work that is accurate and thorough,"
24 that portion, again I'll just take you to kind of the middle
25 of that paragraph. Do you see where it says, "Mary is often

1 given especially complicated cases"?

2 A. Yes.

3 Q. All right. It reads, "Mary is often given especially
4 complicated cases because she is so thorough and does such a
5 high-quality job." Do you see that?

6 A. Yes.

7 Q. And then it goes on and says, "She is a 'step above' on
8 the research and analysis, providing complicated flowcharts
9 in several situations to explain account activity." Do you
10 see that?

11 A. Yes.

12 Q. And, again, this is talking about the flowcharts that
13 you would create to understand the flow of the funds; is
14 that right?

15 A. It says, "Complicated flowcharts...to explain account
16 activity." I don't remember the flowcharts that she's
17 referring to in that timeframe. I don't remember what
18 exactly they showed, but it apparently was account activity.

19 Q. Okay. And if we look at the next sentence, it reads,
20 "Mary created the flowcharts on her own, and they have
21 proven to be a valuable tool in understanding the flow of
22 funds." Right?

23 A. That's what it says, yes.

24 Q. And the purpose of your flowcharts were to understand
25 the flow of the funds, correct?

Pesch - Cross

1 A. To display it.

2 Q. Is there a difference -- I'm sorry. Is there a
3 difference between -- you said display?

4 A. Display. It was a visual aid.

5 Q. Oh, sure. So you drew it out; is that right?

6 A. I don't remember the flowcharts in question. I don't
7 remember how -- from 2000 -- January 2007 to December 2007,
8 I don't remember how I made those.

9 Q. Do you recall at all if you did it on your computer or
10 if you drew out the money going in and out of the accounts?

11 A. I remember some that I made on the computer. I don't
12 remember these specific ones in question, so I can't tell
13 you how I made those.

14 Q. So you displayed them --

15 A. From January 2007 through December 2007.

16 Q. Sure. But you displayed them, and you did that to
17 understand the flow of the funds. Do you agree with that?

18 A. To provide support to help understand it, yes.

19 Q. So that others could understand the flow of funds?

20 A. Yes.

21 Q. Okay. We can put that one aside for now.

22 Let's go to Exhibit 398, Ms. Pesch.

23 A. Which binder was that?

24 Q. It would be -- it's got to be your Volume II.

25 MR. COLLYARD: Your Honor, am I okay to keep going

Pesch - Cross
1 for a little bit?

2 THE COURT: We'll take our break at 10:30.

3 MR. COLLYARD: Thank you.

4 BY MR. COLLYARD:

5 Q. All right, Ms. Pesch. Let's go to Exhibit 398.

6 Can you please take a look at it. Tell me if you
7 recognize this document.

8 (Witness reviews document)

9 MR. COLLYARD: I'm sorry, Your Honor, for the
10 record, Exhibit 398 is admitted into evidence.

11 THE COURT: Thank you.

12 BY MR. COLLYARD:

13 Q. If you look at the top, Ms. Pesch, it says, "Additional
14 Guidelines for Analysis and Investigation of Alerts in
15 Searchspace." Do you see that?

16 A. Yes.

17 Q. And do you understand what this document is?

18 A. Yes.

19 Q. This is a guideline that AML analysts would have to
20 follow when they were reviewing and making -- reviewing
21 alerts in Searchspace and making their determination as to
22 whether or not activity is potentially suspicious; is that
23 right?

24 A. Yes.

25 Q. If we turn to page 5, please, up at the top it reads,

Pesch - Cross

1 "Closed to Expected or Explainable Activity." Do you see
2 that?

3 A. Yes.

4 Q. And that's a state? Is that called a state, in which an
5 analyst could close an alert; is that right?

6 A. Yes.

7 Q. And then is it fair, Ms. Pesch, to say that what this
8 document does is it provides guidance to the anti-money
9 laundering analysts as to what kind of documentation they
10 should have if they so choose to close an alert; is that
11 right?

12 A. It documents the steps to take and some things to
13 consider when working an alert.

14 Q. In some of the things to consider, does it also -- do
15 you also agree that it includes the type of documentation
16 that should be done or could be done when closing an alert?

17 A. It would provide guidance for that.

18 Q. I am going to make my screen a little bit bigger. I'm
19 going to go to the part where it says, "Comments in
20 Searchspace for 'closed to expected or explainable
21 activity,'" and I'm going to highlight the paragraph that
22 says, "The following points" -- the portion that says, "The
23 following points" for you.

24 MS. MOMOH: I'm sorry. Counsel, what page are
25 you?

1 THE COURT: Thank you.

2 MR. COLLYARD: I'm sorry. I'm on page 5.

3 BY MR. COLLYARD:

4 Q. And on page 5 underneath the Heading 1, "Comments in
5 Searchspace," it reads, "The following points should be
6 covered in the comments section of Searchspace when closing
7 an alert." Do you see that?

8 A. Yes.

9 Q. And then down below it, it provides a checklist, right?

10 A. It provides a list.

11 Q. Okay. It provides a list, and these are some of the
12 things that should be covered when closing an alert in
13 Searchspace, right?

14 A. Yes.

15 Q. And this is not -- this is not an exhaustive list,
16 correct?

17 A. Like I said before, every alert could be different. You
18 can't account for every possible step you might possibly
19 need to take. So, yes, there could be additional things you
20 would want to consider.

21 Q. So, for example, at the top of our checklist, it says,
22 "Why did customer alert?" Do you see that?

23 A. Yes.

24 Q. And the analyst would explain why the customer alerted?

25 A. Yes.

1 Q. And then down below it says, "Who is the customer? What
2 kind of business"; is that right?

3 A. That's what it says, yes.

4 Q. As part of documenting information when closing an
5 alert, the analyst would actually explain who the customer
6 is and what kind of business the customer is in; is that
7 right?

8 A. Yes.

9 Q. And then a couple down below it says, "What activity was
10 found?" Do you see that?

11 A. Yes.

12 Q. And in explaining what activity was found, the analyst
13 would actually document or put in their comments, for
14 example, the range of the wires, right?

15 A. For an analyst that was following these steps, yes.

16 Q. And that would be range of dollar amounts for the type
17 of -- or for the wires that were being alerted; is that
18 right?

19 A. Yes.

20 Q. And it would also identify the type of activity, so, for
21 example, if there were checks; is that right?

22 A. Yes.

23 Q. Then a couple below that, it reads, "Describe analysis
24 completed," and it gives an example. Do you see that?

25 A. Yes.

1 Q. And the example is "Discussion with account officer."

2 Do you see that?

3 A. Yes.

4 Q. And is that talking about documenting, for example, the
5 communication with the business bankers or the customer
6 relationship manager if the analyst had reached out to ask a
7 question about whether or not there was a legitimate
8 business purpose for some of the activity?

9 A. It would document if you had reached out, yeah.

10 Q. And I'm sorry. Just to be even more specific, it says
11 the analyst would actually document the discussion that they
12 had with the officer; is that right?

13 A. That's an example that's given.

14 Q. And other things that the analyst could document was
15 they could document the research that they did on the alert;
16 is that right?

17 A. Yes.

18 Q. So looking on the internet, for example, or looking at
19 copies of checks; is that true?

20 A. Yes.

21 Q. They would also document or could document information
22 they learned from looking at other accounts that the
23 customer had at the bank; is that right?

24 A. Yes.

25 Q. And if we go way down to the bottom of the checklist,

1 the last sentence there reads, "Make sure that a conclusion
2 is reached and supported in your comments." Do you see
3 that?

4 A. Yes.

5 Q. And the analysts were documenting the conclusions and
6 the reasons why they were making their decision; is that
7 fair?

8 A. Again, for the analysts that had to follow this part of
9 the directions, yes.

10 Q. If we go to the next page, page 6, Part 2 where it
11 reads, "Closed to Expected," you see a couple paragraphs
12 down below that it says, "The focus for the closed alerts
13 will be explaining the reason for the alert." Do you see
14 that?

15 A. Yes.

16 Q. And it reads, "Analysts will be required to look at
17 everything, but only document what alerted AND the source or
18 use of funds." Do you see that?

19 A. Yes.

20 Q. And when it's saying analysts are required to look at
21 everything, does that mean, for example, if the alert was
22 for incoming and outgoing wires, the analyst would still
23 look at checks on an account, for example?

24 A. Yes.

25 Q. Would there be anything else, like cash or anything else

1 that they would look at?

2 A. They would look at everything in the account.

3 Q. Am I missing -- am I missing anything? So it would be
4 wires. It would be checks. It would be cash. Is there
5 anything else?

6 A. I don't have a full recollection of every transaction
7 type that was in Searchspace.

8 Q. And then the last part of it reads, "Of course, if other
9 unusual activity is identified, that should be commented on
10 as well." Is that right?

11 A. That's what it says.

12 Q. And so if the alert was for incoming and outgoing wires
13 and the analyst -- while looking at everything, the analyst
14 was looking at checks and determined that there was
15 something unusual about the checks, they would comment on
16 that; is that right?

17 A. Yes.

18 Q. Then down below towards the middle of the page, it
19 reads -- where it says, "Ensure," "Ensure that you
20 understand and explain what is going on in the account." Do
21 you see that?

22 A. Yes.

23 Q. And then it gives an example for a wire. Do you see
24 that?

25 A. Yes.

1 Q. It says, "Customer alerts for incoming wires." Do you
2 see that?

3 A. Yes.

4 Q. And this is an example for what they would document or
5 explain with an incoming wire; is that right?

6 A. Yes.

7 Q. And it reads, "Documentation would be needed for the
8 source of the incoming wires AND what the funds appeared to
9 be used for." Is that right?

10 A. Yes.

11 Q. And the analyst would document in the comments section
12 the source of the incoming wires and what the funds were
13 used for in following this particular example; is that true?

14 A. That's how it's listed in this example.

15 Q. And you agree, Ms. Pesch, that when analysts are looking
16 for money laundering, for example, the source and use of the
17 funds is an important factor in determining that?

18 A. Yes.

19 Q. And do you agree that when analysts are looking for
20 unusual activity, the source and the use of the funds is an
21 important factor in determining that as well?

22 A. Yes.

23 Q. If we go to the next page, page 7, where it says,
24 "Reminders," it says, "3, Reminders." "Remember to ask
25 yourself the following questions when closing an alert to

1 expected activity." Do you see that?

2 A. Yes.

3 Q. We've got another checklist, right?

4 A. Another list, yes.

5 Q. It reads, "Do I know where the funds came from?" Right?

6 A. Yes.

7 Q. And that's one of the questions that the analysts should
8 ask themselves when closing an alert, right?

9 A. Yes.

10 Q. And then, "Do I know where the funds went?" That means
11 where the wires are going to, right?

12 A. Yes.

13 Q. So who is wiring the money in and who is getting the
14 money; is that a fair way to say it?

15 A. Yes.

16 Q. And then it reads, "Do the comments provided convince
17 the reader that the alert is not suspicious?" Do you see
18 that?

19 A. Yes.

20 Q. And you agree that the anti-money laundering analysts
21 were supposed to provide enough information in the comments
22 section in Searchspace to convince the reader the alert is
23 not suspicious?

24 A. Yes.

25 MR. COLLYARD: Your Honor, I'm done with this

1 document.

2 THE COURT: It's time for our midmorning break as
3 well. And so, Members of the Jury, we'll take our
4 midmorning break now. Please be prepared to come back to
5 the courtroom at 10:45, and please remember the instructions
6 that I have given you, not to discuss the case, any research
7 on the case, or anything else about the case or the people
8 involved. We're in recess.

9 (Jury excused)

10 **IN OPEN COURT**

11 **(JURY NOT PRESENT)**

12 THE COURT: Is there anything that needs to be
13 addressed outside of the presence of the jury?

14 MR. COLLYARD: Not by plaintiff, Your Honor.

15 MR. GLEESON: I have two brief applications,
16 Judge. I can do them now or at the beginning of the lunch
17 hour. Your call.

18 THE COURT: Let's do it at the beginning of the
19 lunch hour, okay.

20 And you are free to leave the courtroom. Please
21 remember it's as if you are on the witness stand, however,
22 during this break, so please don't discuss the case with
23 anyone or let anyone discuss the case with you. Okay?

24 THE WITNESS: (Nodding.)

25 THE COURT: We'll be back.

1 MR. COLLYARD: Thank you, Your Honor.

2 MS. MOMOH: Your Honor, if I may briefly, can we
3 excuse the witness and then I can make a comment?

4 (Witness excused from courtroom)

5 THE COURT: Please be seated. We will be back in
6 session.

7 MS. MOMOH: Thank you, Your Honor. I just want to
8 clarify for the record and then clarify the understanding
9 among counsel from both sides. As you know, plaintiff is
10 calling Ms. Pesch adversely in their case-in-chief. The
11 parties have reached an agreement that with respect to BMO's
12 examination of Ms. Pesch, it's essentially going to be
13 similar to a direct examination. And so I just wanted to be
14 clear on the record that with respect to my examination of
15 Ms. Pesch, that I am not tied with respect to scope as to
16 the questions that were raised in her direct or
17 cross-examination by plaintiff's counsel.

18 THE COURT: So you are calling her as a witness
19 and wish to conduct direct examination?

20 MS. MOMOH: Following Mr. Collyard's examination,
21 Your Honor, yes, just so that we don't have to burden the
22 witness and call her separately in our case-in-chief, which
23 at this point we don't know when we will be presenting our
24 case-in-chief.

25 THE COURT: Is there any objection?

1 MR. COLLYARD: For efficiency purposes,
2 Your Honor, we would be glad to do it.

3 THE COURT: Very well.

4 MR. COLLYARD: And then I would just be able to
5 cross-examine at the conclusion.

6 THE COURT: Absolutely.

7 MS. MOMOH: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Recess taken at 10:32 a.m.)

10 * * * * *

11 (10:51 a.m.)

12 **IN OPEN COURT**

13 **(JURY PRESENT)**

14 THE COURT: Please be seated. Counsel, are you
15 ready to proceed?

16 MR. COLLYARD: I am, Your Honor. We would like to
17 proceed with the testimony of Ms. Pesch.

18 THE COURT: You may.

19 Yes, please. If you would like, you may pull the
20 base of the microphone closer to you if you would like to.
21 Otherwise, it's fine.

22 Okay. Counsel, you may proceed.

23 MR. COLLYARD: Thank you, Your Honor.

24 BY MR. COLLYARD:

25 Q. Ms. Pesch, I would like you to go to Exhibit 234. If

1 you can please tell me -- I'm sorry. If you can please look
2 at it and tell me whether this is another additional
3 guideline that the anti-money laundering analyst would
4 follow when investigating and closing an alert in
5 Searchspace.

6 A. This was another version of that document.

7 Q. Are you familiar with this document as well?

8 A. I remember there were multiple versions. I don't have
9 them memorized, so I'm not sure what you mean by "familiar."

10 Q. The content in this document looks familiar to you; is
11 that right?

12 A. Yes.

13 Q. And this is another version of what we saw in Exhibit
14 398; is that right?

15 A. I don't remember the exhibit number, but one of the
16 previous exhibits, yes.

17 Q. It was the last exhibit that we were just talking about?

18 A. Yes.

19 MR. COLLYARD: Your Honor, offer Plaintiff's
20 Exhibit 234.

21 MS. MOMOH: No objection, Your Honor.

22 THE COURT: Exhibit 234 is received.

23 BY MR. COLLYARD:

24 Q. Again, Ms. Pesch, this is a similar document to Exhibit
25 398, and I just want to take you to a page and just -- page

1 3, if you will. And if you remember, I don't know if you
2 remember, but the last exhibit in Exhibit 398, it was Number
3 3 and then it listed reminders. Do you recall that, that we
4 just talked about before --

5 A. Number 3?

6 Q. Yeah. I'm sorry. You can actually go to 3 -- let's
7 just go to 398. I'll just show it to you this way.

8 If we go to page 7 in 398, if you recall I was
9 asking you about the reminders, and it was under Heading
10 Number 3. Do you see that?

11 A. Yes.

12 Q. Now if we go to Exhibit 234 and we look at page 3 and we
13 go to the bottom, it says, Number 2, "Reminders." Do you
14 see that?

15 A. Yes.

16 Q. And if we go to the -- this is, "Remember to ask
17 yourself the following questions when closing an alert to
18 expected activity." Do you see that?

19 A. Yes.

20 Q. And if we have got to go to page 4 at the very top, and
21 at the very top of page 4, it says, "Do the comments
22 provided convince the reader that the alert is not
23 suspicious?" Do you see that?

24 A. Yes.

25 Q. And that's the same exact reminder that was in Exhibit

Pesch -- Cross
1 398; is that true?

2 A. It looks like the same message.

3 Q. And, again, anti-money laundering analyst was supposed
4 to provide enough information in the comments section in
5 Searchspace under this guideline and document as well to
6 convince the reader that the alert is not suspicious; is
7 that true?

8 A. Could you repeat that?

9 Q. Yes. The anti-money laundering analyst was supposed to
10 provide enough information in the comments in Searchspace to
11 convince the reader that the alert is not suspicious; is
12 that true?

13 A. It said, "Do the comments provided convince the reader
14 that the alert is not suspicion?"

15 Q. I'm asking you, Ms. Pesch, if you agree that the
16 anti-money laundering analyst was supposed to provide enough
17 information in the comments section in Searchspace to
18 convince the reader that the alert is not suspicious?

19 A. Yes.

20 Q. We can put 234 aside.

21 Let's go to Exhibit 183.

22 A. Is that in the other binder?

23 Q. Exhibit 183 -- your Exhibit 183 is going to be in your
24 Volume I if you would like the hard copy version.

25 Okay. I have -- you see my Exhibit 183 just to

Pesch - Cross
1 see what it looks like. Can you take a look at yours.

2 A. Look at the entire thing?

3 Q. No. Do you have the entire exhibit available so we can
4 flip through it?

5 A. I have this whole section (indicating).

6 Q. Yes. Right, okay. You have it.

7 Can you take a look at the beginning of Exhibit
8 183 and tell me if you agree that these are audit trails for
9 the alerts on the Petters Company, Inc. account that were
10 closed in Searchspace.

11 (Witness reviews document)

12 MR. COLLYARD: As Ms. Pesch is doing that,
13 Your Honor, I'm going -- I'll publish Exhibit 183, which is
14 already in evidence.

15 THE COURT: You may.

16 BY MR. COLLYARD:

17 Q. Ms. Pesch, I'll help you out too. If you can -- if you
18 want to flip to page 26 for an Alert Number 60827. Are you
19 there?

20 A. Yes.

21 Q. And do you agree that these are the audit trails for
22 alerts that were closed on the Petters Company, Inc. account
23 in Searchspace?

24 A. I haven't had a chance to look through all of them, but
25 this one and the ones I have seen are alert histories.

1 Q. And this particular one, Alert 60827, is an alert that
2 you reviewed and investigated and close; is that right?

3 A. Yes.

4 Q. If we look at the top, it says, assigned to "MDrewiske."

5 A. Drewiske.

6 Q. Drewiske. That's your name?

7 A. That was my maiden name.

8 Q. So when we see Drewiske, that means you?

9 A. Yes.

10 Q. And so this alert was for the time period of November of
11 2005. Do you see that?

12 A. Yes.

13 Q. And I'm going to expand this a little bit more to go
14 down to the comments.

15 Now, are these -- is this documentation, are these
16 considered comments in Searchspace that would be the
17 comments that we were talking about that would be entered
18 with respect to Exhibits 398 and 234 that we just talked
19 about; is that right?

20 A. Yes.

21 Q. And this is essentially the reasons or the justification
22 for closing the alert; is that right?

23 A. That would be included in it.

24 Q. Is that what the purpose of this documentation was?

25 A. The purpose of the documentation was documenting the

review of the alert.

Q. Including documenting the reasons for why the alert was closed?

A. Yes.

Q. And this documentation includes, for example, why the activity was alerted; is that right?

A. Yes.

Q. So what we will find in here is information about whether it alerted for incoming and outgoing wires, for example; is that right?

A. That was the process. I haven't had a chance to read through everything yet for this alert.

Q. If we take a look at this document, I just want to -- I'm sorry. I want to go back up to the Alert 60827 and focus on that for a second. So this is Alert 60827. Now if we go back down and we look at the first entry kind of in the boxes there where it reads, "Alert 61806 for Petters Company, Inc. has been moved to the Closed-Multiple Alerts state." Do you see that?

A. Yes.

Q. Can you explain what's happening there?

A. It means there was another open alert while this alert was opened, so they were linked together to be reviewed together.

Q. So if we took Alert 61806, that is also an alert that

had alerted, correct?

A. Yes.

Q. And you had reviewed it and closed it with 60827, the title of this alert, right?

A. I didn't close that alert, but I included the activity from that alert in my review of this alert.

Q. You did not -- when you say you didn't close that alert, meaning what?

A. That alert, 61806, was closed to the multiple state by Sara Johnson.

Q. So would you have reviewed the activity for the Alert 61806 to make a determination as to whether or not that alert should be closed?

A. Yes.

Q. And you would have included your documentation for closing Alert 61806 in this alert, which is 60827; is that right?

A. Typically when we had alerts closed in multiples, we wouldn't break them out individually. We would review them together.

Q. Right.

A. So there would be one set of comments for the combined alerts.

Q. I gotcha. So what you were doing is you would take -- and let's just go down one more. I will just show you

1 another one. You have Alert 62728 as well, right?

2 A. Yes.

3 Q. So that's another alert that you would have been
4 reviewing -- you would have been reviewing the activity on
5 while you were making your determination in 60827, and they
6 were combined and you closed them as one in 60827; is that
7 fair?

8 A. Yes.

9 Q. So for this particular alert, it's from November of
10 2005, which it says it up at the top, right?

11 A. Yes.

12 Q. And then down below we've already talked about two
13 alerts. So you've got 61806 in the first entry, and then
14 the next entry you've got Alert 62728. Do you see that?

15 A. Yes.

16 Q. And at the very bottom of the page it starts out another
17 alert, and that is Alert 63517. Do you see that?

18 A. Yes.

19 Q. And then if we go to the next page, which is page 27,
20 and at the top it reads, "This alert was an AML Monthly
21 Alert created for activity that occurred in February of '06
22 and must be reviewed in conjunction with the current alert."

23 Do you see that?

24 A. Yes.

25 Q. So we've got four alerts really that you are

investigating and analyzing; is that true?

A. Yes.

Q. And the four alerts are 61806, 62728, 63517, and the original alert of 60827. Do I have that right?

A. Yes.

Q. And the time period that you reviewed the activity for was November 2005 through February of 2006. Do I have that right?

A. Based on the comments entered here, yes.

Q. Now, if we look down -- and, by the way, I'm sorry, each one of those alerts were closed in 60827; is that true?

A. What -- those individual alerts were closed in multiple, but the transaction activity that I reviewed combined with this 60827 alert was closed.

Q. In 60827?

A. Yes.

Q. So let's go to -- we're on page 27, and down towards the bottom, it's the second to the last block, where it says, "See MIContacts," that block. And kind of in the middle of it, it says, "Business checking account [REDACTED] 9018 was reported in 11/05, 12/05, 1/06, and 2/06." Do you see that?

A. Yes.

Q. And the [REDACTED] 9018 account number, that's the Petters Company, Inc. account number, right?

A. Sorry. I have to compare the number just to make sure.

Pesch - Cross

1 Yes.

2 Q. And what this is saying is the business checking account
3 for the Petters Company, Inc. account reported or was
4 alerted for these particular months; is that right?

5 A. Yes.

6 Q. And the alerts were for peer volume and value of
7 incoming and outgoing wires; is that true?

8 A. Based on what's written, yes.

9 Q. And what that means is the alerts were sounding off --
10 or I'm sorry, the alerts were going off for the value of the
11 incoming and outgoing wires, for example, right?

12 A. That was one of the factors.

13 Q. And what that simply means is the amount of money coming
14 in and going out of the account?

15 A. Through wires, yes.

16 Q. And volume means just the number of wires; is that
17 right?

18 A. Yes.

19 Q. So the alert is going off for the number of wires going
20 in; is that right?

21 A. That was part of it.

22 Q. The number of wires going out; is that right?

23 A. Yes.

24 Q. And then the alerts are going off as well for the amount
25 of money being wired into the account; is that right?

1 A. Yes.

2 Q. And the amount of money being wired out of the account;
3 is that also true?

4 A. Yes.

5 Q. Now, if we flip to the next page, up at the very top,
6 that first block, I'll pull that up, and it reads, "There
7 were 817 incoming wire deposits that totaled \$2.562.3
8 billion. Do you see that?

9 A. Yes.

10 Q. And the \$2.562 billion, that was the amount of money
11 that had alerted for the incoming wires?

12 A. That was the amount of the total wires during the
13 timeframe.

14 Q. That had alerted, correct?

15 A. I don't have the data in front of me. What the comments
16 said is I gave the number, total number, and the total
17 value.

18 Q. So if you took the four alerts that were mentioned
19 earlier and you took the value of the money being wired into
20 the account for those four alerts and you combined them, it
21 was \$2.562 billion; is that a good way of saying it?

22 A. Yes.

23 Q. And then you list, "Incoming wires were from." Do you
24 see that?

25 A. Yes.

Pesch - Cross

1 Q. And you list a few entities, right?

2 A. Yes.

3 Q. One of them is Enchanted Family Buying Company. Do you
4 see that?

5 A. Yes.

6 Q. Another one is Metro Gem. Do you see that?

7 A. Yes.

8 Q. Now you do not list in here an entity called Nationwide
9 International Resources, do you?

10 A. I don't see that in the comment --

11 Q. Do you remember --

12 A. -- this comment in question.

13 Q. I'm sorry, Ms. Pesch. Do you remember investigating and
14 reviewing this particular alert?

15 A. No.

16 Q. Do you remember, for example, when you were
17 investigating this alert what you knew or what you looked
18 into about Enchanted Family Buying Company?

19 A. For this particular alert, no.

20 Q. If you -- let's go down a couple blocks where it says,
21 "There were several transfers from account number." And it
22 says, "The majority of the checks deposited appear to be for
23 employee purchases of event tickets (such as concert
24 tickets) through the company." Do you see that?

25 A. Yes.

1 Q. And you're noting that the majority of the checks that
2 were deposited into the account were for concert tickets?

3 A. That's what the comment says.

4 Q. And when you say "majority," majority has significance
5 to you?

6 A. What do you mean by "significance"?

7 Q. Why are you noting the majority of the checks?

8 A. That it was a large portion of the activity of the
9 checks.

10 Q. And why is majority important to you?

11 A. It was an easy way to summarize the activity.

12 Q. Were you actually looking for, for example, what the
13 majority of certain activity would have been?

14 A. Can you clarify that, please?

15 Q. Sure. Are you actually looking to see like where are
16 the majority of the checks coming in from?

17 A. I was looking at all the checks.

18 Q. What I'm trying to figure out is why you're noting
19 majority and what significance that has.

20 A. It was an easy way to summarize the activity.

21 Q. And you're noting here majority because does majority,
22 for example, signify a pattern?

23 A. I would say it identifies a large portion.

24 Q. And you thought that was significant to note in these
25 comments, correct?

Pesch - Cross

1 A. It was my practice to summarize activity, and it was an
2 easy way to summarize the activity.

3 Q. Did you think it was important enough to mention
4 majority in your comments?

5 A. I don't remember working this alert. I don't remember
6 what I was thinking at the time.

7 Q. Ms. Pesch, I'm sorry, I am going to try to ask you a yes
8 or no question. And I would appreciate it if you would try
9 to answer it yes or no. My question is: You determined
10 that it was significant enough to write the term "majority"
11 when you were considering the checks on the account,
12 correct?

13 A. I can't answer that as a yes or no because I don't
14 remember working this specific alert.

15 Q. Let me ask it this way: So you note that the majority
16 of the checks were for concert tickets, right?

17 A. Yes.

18 Q. And you've got -- if you step back up to the incoming
19 wires, we've got \$2.562 billion of incoming wires, right?

20 A. Yes.

21 Q. You don't say what those wires are for, do you?

22 A. No.

23 Q. You don't say who the majority or what the majority of
24 the wires are for, do you?

25 A. I did not use that word.

1 Q. And you don't note who the majority of the wires came in
2 from, do you?

3 A. Today sitting here, no, I don't.

4 Q. No, I'm asking you -- I'm sorry. You don't note that in
5 your comments, do you?

6 A. I did not use the word "majority."

7 Q. And if you -- let me ask you this: How you figured out
8 that the majority of checks deposited appear to be for
9 employee purchases such as concert tickets, okay, you would
10 try to figure out what the majority of the wires being used
11 for like you did with checks, correct?

12 A. I don't remember why I chose these specific words for
13 entering the comments or how -- what I was thinking when I
14 was adjudicating this alert, so I can't really say.

15 Q. My question, Ms. Pesch, is: You would also try and
16 figure out what the majority of the \$2.56 billion was being
17 used for like you did with these checks from employees,
18 correct?

19 A. I would look to see if there were wire originators that
20 sent lots of wires, yes. In terms of beyond that, I don't
21 know what I was thinking when I wrote this.

22 Q. Ms. Pesch, if you can turn to page 234 of your
23 deposition. And if you go towards the bottom, line 24, I am
24 going to read it to you. I asked you the question: "Would
25 you also try and figure out, then, what the majority of the

1 \$2.56 billion was being used for like you did with these
2 checks from employees?" Do you see that?

3 A. Yes.

4 Q. And you answered: "That would be part of the source and
5 use analysis, yes." Did I read that correctly?

6 MS. MOMOH: Objection, Your Honor, improper
7 impeachment. Sidebar?

8 THE COURT: Overruled.

9 MS. MOMOH: Your Honor, sidebar, please, if I may?

10 THE COURT: (Indicating).

11 **(At sidebar)**

12 MS. MOMOH: Thank you. One moment.

13 (Pause)

14 MS. MOMOH: So he's reading this question right
15 here (indicating), and this is her response and -- to this
16 question here. "My question, Ms. Pesch, is you would also
17 try and figure out what the majority of the 2.56 billion was
18 being used for like you did with these checks from
19 employees, correct?" That's what he asked her today at
20 trial, Your Honor. Her response was: "I would look to see
21 if there were wire originators that sent lots of wires, yes.
22 In terms of beyond that, I don't know what I was thinking
23 when I wrote this." That was her response.

24 And then he attempted to impeach her with her
25 deposition testimony without getting her to confirm that her

1 response was different than what she had testified to
2 previously. Her response at the time of the deposition was
3 as follows (indicating): Her response here was simply "I
4 don't know."

5 THE COURT: So you want him to use a different
6 form of impeachment?

7 MS. MOMOH: At this point if she says "I don't
8 know," the proper form would be to clarify what is it that
9 you don't know. But right now she hasn't testified to
10 anything that's inconsistent.

11 THE COURT: We are not going to have sidebars
12 every time the exact manner of cross-examination does not
13 comport with the model/manner of cross-examination.

14 MS. MOMOH: And, Your Honor, it's not really with
15 respect to form and technique. It's just simply improper.
16 I mean, he's using this, and he's already stating this into
17 the record for the jurors to hear without him properly
18 establishing that there is an improper -- an inconsistent
19 statement.

20 As I see what she testified to and to what she
21 testified here (indicating), there's no inconsistency. It's
22 an "I don't know" versus a response she provided at the time
23 of her deposition.

24 THE COURT: So you want her to look at it and
25 see -- and have him ask if she answered differently before?

1 MS. MOMOH: Yes, please, Your Honor. Yes.

2 THE COURT: We are not going to stand up as to the
3 form of the question and have objections every time there is
4 some minor difference in the formal way of
5 cross-examination. Do you understand that?

6 MS. MOMOH: Yes, Your Honor, but if I may, again,
7 this is not with respect to form. This is not with respect
8 to it being a minor issue, Your Honor. What I'm trying to
9 prevent is an issue where there's a question of substance
10 and the question of substance and how it is answered by
11 Mr. Collyard instead of by the witness is what the jurors
12 are hearing. It's not a minor point, Your Honor. And this
13 goes to a key point in this case, otherwise, I wouldn't be
14 objecting.

15 MR. COLLYARD: Your Honor, if I may? Ms. Momoh is
16 totally fine asking these questions again when you are going
17 to call your witness and you can point out if I have done
18 something that you think did not comport with the testimony
19 and she can say it. I believe what I am doing is proper
20 impeachment.

21 THE COURT: You can impeach with a prior
22 inconsistent statement. Is that what you are doing?

23 MR. COLLYARD: That's what I am doing, yes.

24 MS. MOMOH: So I think you have already provided
25 the instruction as to how he should proceed, to clarify what

1 she had testified to, to compare it to what she testified to
2 in her deposition without the language first coming out. He
3 has --

4 THE COURT: We don't need your tutorial on this.

5 MS. MOMOH: Understood, Your Honor.

6 THE COURT: I have spoken. Both of you understand
7 English, and I think you, as officers of the court --

8 MS. MOMOH: Yes, Your Honor.

9 THE COURT: -- will abide by my rulings.

10 MS. MOMOH: Yes, Your Honor. Yes, Your Honor.

11 **(In open court)**

12 THE COURT: Counsel, you may proceed.

13 MR. COLLYARD: Thank you, Your Honor.

14 BY MR. COLLYARD:

15 Q. Ms. Pesch, I'm sorry. I don't believe we got the last
16 part of that answer. I was reading your answer and your
17 answer was: "That would be part of the source and use
18 analysis, yes." Did I read that correctly?

19 A. I don't remember what line we're on. Can you --

20 Q. I'm sorry. We're on page 235, line 3. You answered my
21 question: "That would be part of the source and use
22 analysis, yes." Do you see that?

23 A. Yes.

24 Q. And that's how you answered it when I took your
25 deposition; is that right?

1 A. That's how it was recorded.

2 Q. And that was truthful and accurate testimony at that
3 time, correct?

4 A. Yes.

5 Q. And so, Ms. Pesch, when you try to figure out what the
6 majority of the wires were being used for like you did with
7 the checks, what exactly would you do to go and try and
8 figure that out?

9 A. I would export the wires into Excel, and I could sort
10 the wires.

11 Q. And then you would go and look at the wires?

12 A. Yes.

13 Q. And you would try to figure out what they were being
14 used for, correct?

15 A. We didn't have purpose information in Searchspace from
16 what I can recall.

17 Q. When you were trying to figure out what the majority of
18 the wires were being used for, you would try to figure out
19 what they were actually being used for, correct?

20 A. We would look at who they went to.

21 Q. I'm sorry. These incoming wires.

22 A. Okay. Could you repeat your question then?

23 Q. Yes, Ms. Pesch, I will back up. I know it got a little
24 muddled in there.

25 I had asked you if you had tried to figure out

1 what the majority of the wires were being used for like you
2 did with checks. And we went through and established that,
3 and you told me, yes, that would be part of the source and
4 use analysis, right?

5 A. Are you referring to what was in -- recorded in the
6 deposition?

7 Q. Yes, and what I just asked you. I'm asking you if you
8 remember that.

9 A. I remember that we just went over that.

10 Q. Okay. And so when -- then when you were trying -- what
11 I am doing now is stepping back, and I am trying to figure
12 out when you were actually doing your investigation and when
13 you were trying to figure out what the majority of the wires
14 were being used for, just like you did with checks, I'm just
15 simply asking you what you would actually do to do that.

16 A. Well, the use of an incoming wire would have been where
17 the money moved to, so that's why I answered in reference to
18 debit-type activity.

19 Q. That's what you would have done to figure out what the
20 majority of the money of the \$2.56 billion being wired into
21 the account was used for?

22 A. Based on how you worded that question, yes.

23 Q. And you have looked at the incoming wires, for example,
24 to see if they made sense for the Petters Company, Inc.
25 business, correct?

Pesch Cross

1 A. Based on my understanding of the company, yes.

2 Q. And you would have done that analysis in determining and
3 figuring out what the majority of the wires were being used
4 for like you did with checks; isn't that true?

5 A. Again, use wouldn't have been the money coming in, so
6 I'm confused by how you are wording this.

7 Q. Ms. Pesch, I am going off of your own testimony where
8 you testified that you would figure out what the majority of
9 the wires were being used for like you did with checks.

10 A. Let me grab it so I can...

11 Q. And I am asking you, Ms. Pesch, is one of the things
12 that you would do is you would have looked at the incoming
13 wires to see if those incoming wires made sense for the
14 Petters Company, Inc. business based on your understanding?

15 A. Can you give me a minute to read a few lines above this,
16 please?

17 Q. Ms. Pesch, I'm not asking you about that. I'm asking
18 you a simple question.

19 THE COURT: Counsel.

20 You may take your time to prepare yourself to
21 answer the question.

22 THE WITNESS: Thank you.

23 (Witness reviews document)

24 A. Based on what I am reading in here, you had discussed
25 source and use separately, and I feel like your question is

1 combining them. So could you please rephrase your question?

2 Q. I'm going to ask you this question, Ms. Pesch. And my
3 question is: Would you have looked at the incoming wires to
4 see if they made sense for the Petters Company, Inc.
5 business based on your understanding of the Petters Company
6 business?

7 A. Yes.

8 Q. Now, if we go back to these entries here in Exhibit 183,
9 and if we go down two more blocks where it reads, "There
10 were 715 wires totaling 2.55 billion." Do you see that?

11 A. Yes.

12 Q. It reads, "There were 715 wires totaling \$2.55 billion."
13 Those are the outgoing wires; is that right?

14 A. It appears so.

15 Q. And you say, "Many outgoing wires were sent to accounts
16 held by the Petters Companies at other financial
17 institutions." Do you see that?

18 A. Yes.

19 Q. So what you're saying there is many of the outgoing
20 wires from the \$2.55 billion were being sent to other
21 Petters businesses; is that right?

22 A. That's what I wrote.

23 Q. And then you -- it says, "Other wires were sent to," and
24 then you list some entities, right?

25 A. Yes.

1 Q. And you list Metro Gem. Do you see that?

2 A. Yes.

3 Q. Now, you listed Metro Gem as having incoming wires,
4 correct?

5 A. Yes.

6 Q. And you list Metro Gem as having outgoing wires; is that
7 right?

8 A. Yes.

9 Q. And you don't mention why or what the reason for there
10 being incoming and outgoing wires from Metro Gem, do you?

11 A. It doesn't appear so.

12 Q. Then down below that you talk about more checks. If we
13 go to the next column below that it reads, "Other debits
14 were transfers for Euro Sweeps and checks." Do you see
15 that?

16 A. Yes.

17 Q. "Checks clearing the account were for loan payments,
18 utilities, investment companies, and law firms." Do you see
19 that?

20 A. Yes.

21 Q. And that's an example of the use of the funds?

22 A. Yes.

23 Q. And the example you gave me earlier where you noted that
24 there was checks for things like concert tickets, that's use
25 of the funds?

1 A. The checks referencing concert tickets were deposited to
2 the account.

3 Q. Okay.

4 A. So for the account in question, that would be considered
5 a source because it's coming in.

6 Q. And you -- okay. Let me see if I understand this. So
7 where you're saying the checks that were deposited in for
8 things like concert tickets, that's the source of the funds?

9 A. For the funds from the checks, yes.

10 Q. And you're explaining what the reasons were for those
11 checks, right?

12 A. Yes.

13 Q. Now, you don't list any particular employee who the
14 checks are coming in from, do you?

15 A. No.

16 Q. But mention employees, right?

17 A. Yes.

18 Q. So in your definition of source, it's who was depositing
19 the checks in and what those checks were being used for; is
20 that correct?

21 A. The person making the deposits to the account is who?
22 Who was depositing the checks?

23 Q. You told me that the checks being deposited in the
24 account were the source, correct?

25 A. Right, but your wording was a little confusing about who

1 was depositing.

2 Q. You say employees deposited the checks; isn't that
3 right?

4 A. No. I said the checks deposited appear to be employee
5 purchases. I didn't say employees were making deposits.

6 Q. Okay. I gotcha.

7 So the checks -- the reason for the checks -- so
8 you have got the reason for the checks, which are employees
9 making purchases of event tickets, right?

10 A. Yes.

11 Q. And is it reasonable to conclude that employees were
12 writing checks into the Petters Company, Inc. account to pay
13 for concert tickets?

14 A. Based on these comments, they were writing checks that
15 were deposited. I don't know sitting here who made the
16 deposits.

17 Q. So you can't tell if it was employees writing checks
18 into the account to purchase concert tickets?

19 A. I can see what the comments say, and it appears that the
20 checks were from employees to purchase concert tickets.

21 Q. So --

22 A. I'm saying I don't know who physically made the deposit.
23 It wasn't clear based on how you were asking the question.

24 Q. Okay. So let me back up. I'm sorry. I may have
25 confused myself.

Let's talk about this. So you told me that the checks being deposited into the account was the source of the funds, right?

A. The source of the funds for the checks, yes.

Q. Yes, for the checks. Do I have that right?

A. Yes.

Q. So the checks coming into the account are the source of the funds for the checks?

A. Yes.

Q. And the source of the funds includes the employees who are depositing the checks into the account?

A. The checks were -- appeared to be from employees.

Q. Is that part of the source of the checks?

A. Yes.

Q. And then you talk about what the checks were actually used for, correct?

A. Which checks are you talking about?

Q. I'm talking about the checks that were -- that you're talking about. I'm talking about the checks that were deposited that appear to be for employee purchases of things like concert tickets.

A. I'm sorry. I'm still confused by your wording.

Q. You told me that the checks deposited for concert tickets by employees is the source, the source of the checks, right?

1 A. The checks were the source of the money coming in, and
2 the checks were from -- appeared to be from employees.

3 Q. So included within source we have the employees who are
4 writing the checks to purchase the tickets, right?

5 A. Yes.

6 Q. And we have your explanation for what those checks were
7 used for, which is concert tickets, right?

8 A. Yes.

9 Q. Okay. Now, having understood -- now that I understand
10 source, I will pause there because you were telling me that
11 the way I'm asking my questions is confusing in the AML
12 analyst's world because I am talking about use of funds,
13 right?

14 A. It wasn't clear, yes.

15 Q. So source is the money coming in and the reasons for the
16 money coming in -- is that fair? -- based on what we just
17 talked about with checks?

18 A. Source would be the money coming in.

19 Q. Okay. And then use of the funds is going out of the
20 account; is that what we were talking about?

21 A. Yes.

22 Q. Okay. So now that we have our definition of source, go
23 back to the \$2.562 billion in incoming wires. And what you
24 would have done is you would have taken -- you would have
25 gone back to the \$2 .562 billion in incoming wires, and you

1 would have tried to figure out what the majority of -- I
2 don't want to use used. Do I say what the majority of the
3 source of the wires was being used for?

4 A. That terminology is better. I don't remember what
5 exactly I was thinking when I worked this alert, but, yes,
6 we would have reviewed the incoming wires and who they came
7 from.

8 Q. And like you did with checks, where you figured out the
9 reason for the checks, as part of your analysis, too, is you
10 would have looked to see if you could determine what the
11 reason for those wires -- however you want to describe it,
12 as source or whatever you want to say -- what the reason of
13 those wires was for, correct?

14 A. Like I said before, that use information wasn't in
15 Searchspace. And I don't remember when we got access to the
16 wire system. When you look at checks, there's a memo line.
17 And we had access to that other system where we could pull
18 up checks; and if it was written on the check, it was easy
19 to see what that check -- it was easy to read the memo on
20 that check.

21 Q. In your experience as an anti-money laundering analyst,
22 when you were looking at incoming wires you would have at
23 times gone back and looked for the reason for the incoming
24 wires, as we've already talked about, correct?

25 A. Can you clarify the time frame?

1 Q. 2005 up to whenever you would like it.

2 A. If it was available, that was something we looked at.

3 Q. And, in fact, you told me -- now you told me that the
4 checks sometimes have some notations in them, right?

5 A. Yes.

6 Q. If we look down below in the next box and we are talking
7 about incoming -- we've got to go back to the incoming
8 wires. Okay? So up at the top, where it's got 817 incoming
9 wires. I am going to look at the following box as well.

10 Okay. So you told me, Ms. Pesch, that the checks
11 had some reference on them and you could figure out some
12 information by looking at the checks. Do you remember that?

13 A. Yes.

14 Q. Now, down below it reads, "Some wires reference note
15 numbers." Do you see that?

16 A. Yes.

17 Q. So wires have information on them as well, correct?

18 A. The wire data -- the wire data does, yes.

19 Q. These particular wires reference note numbers, true?

20 A. I don't remember how I researched these. I don't know
21 if I had access to that other system.

22 Q. I understand that you may not remember, but if you just
23 look at your own comments, is it reasonable to conclude that
24 the wires were referencing note numbers on them?

25 A. Yes.

1 Q. And you thought that was significant to note in your
2 comments section, right?

3 A. Yes.

4 Q. And that would be an indication as to some information
5 about what the wires may have involved or the reasons for
6 the wires; is that also accurate?

7 A. Yes.

8 Q. Now, you've got the incoming wires for \$2.562 billion
9 coming in. And then if we go down, I just want to compare
10 the amount of the outgoing wires. You've got \$2.55 billion
11 going out.

12 So 2.56 billion in and 2.55 billion out, right?

13 A. Yes.

14 Q. And you agree that those are similar numbers, right?

15 A. Yes.

16 Q. And as part of doing investigations and analysis as to
17 whether or not activity was potentially suspicious, one of
18 the things that you would do as an anti-money laundering
19 analyst is you would look to see if there were patterns, for
20 example, of similar amounts of money going in and out of an
21 account; isn't that right?

22 A. We would look for unusual activity. I don't -- we would
23 look for unusual activity.

24 Q. And as part of looking for unusual activity, you would
25 look and see if similar amounts of billions of dollars are

1 going in and out of an account, right?

2 A. That by itself I wouldn't say is necessarily suspicious.

3 Q. Okay. But if it's not by itself necessarily suspicious,
4 you would -- you have considered -- you would consider in
5 the past similar amounts of money going in and going out of
6 an account as one of the indicators that you would look into
7 that activity further; is that fair to say?

8 A. It could be.

9 Q. And, in fact, one of the things that you would do
10 when -- and tell me if you've done this -- is when you're
11 looking at activity in the past and it's similar amounts of
12 big numbers going in and out, you would actually look and
13 see what the difference was between the in and outs, right?

14 A. Can you clarify the time frame you're talking about?

15 Q. We'll go 2005 to 2008.

16 A. Sometimes.

17 Q. And you're looking at the difference because you're
18 looking to see if the difference was small, correct?

19 A. I get -- we were just looking to see what the difference
20 was if we did that analysis.

21 Q. And looking to see if large amounts of money are coming
22 into an account and going directly out of an account with a
23 small difference would be one of the things, even though it
24 may not be the only thing, would be one of the things that
25 you would consider and you would look at as you were trying

1 to determine whether or not activity was suspicious on an
2 account, correct?

3 A. It could be something you would conclude, but by --
4 include, excuse me. But by itself, that wouldn't be
5 suspicious.

6 Q. But it would be part of your overall analysis, correct?

7 A. If there were other suspicious factors and that was
8 present, you could include that.

9 Q. Do you recall, Ms. Pesch, during the time period of 2005
10 through 2008 how many times on alerts you would see multiple
11 billions of dollars for similar amounts going in and out of
12 an account outside of the Petters Company, Inc. account?

13 A. I don't remember.

14 Q. Can you name one client where you reviewed activity on
15 an account and there was multiple billions of dollars on an
16 alert going in and out for similar amounts of money?

17 A. I don't remember.

18 Q. I want to pause on 60827 and I want to go to -- we are
19 going to come back to it, but I want to go to a different
20 alert that you closed, which is 64556, and I will find that
21 for you. It's on page 37.

22 If we're at page 37, Ms. Pesch, if we look up to
23 the right, do you see this alert for 64556 was assigned to
24 you, correct?

25 A. Yes.

1 Q. And this alert month was March of 2006. Do you see
2 that?

3 A. Yes.

4 Q. I am going to expand below and capture that first box.
5 In that first box it reads, "May of 2006. Alert 66209" --
6 just give me a second here -- "Alert 66209 has been moved to
7 the Closed-Multiple Alerts state." Do you see that?

8 A. Yes.

9 Q. And then down below it reads this is "activity that
10 occurred in April of 2006 and must be reviewed in
11 conjunction with the current alert." Do you see that?

12 A. Yes.

13 Q. So do I understand this correctly that what was
14 happening here was you reviewed two alerts again at the same
15 time, which was 64556 and 66209, and both of those alerts
16 were ultimately closed as Alert 64556?

17 A. Yes.

18 Q. And this would have covered the months of March of 2006
19 up through April of 2006; is that right?

20 A. Yes.

21 Q. Now, if we flip to the next page, we are going to go
22 fourth block down, where it reads, "Account number." Right
23 there.

24 It reads, "Account number [REDACTED] 9018 alerted in March
25 of '06 and April of '06." Do you see that?

1 A. Yes.

2 Q. This is for peer volume and value of incoming and
3 outgoing wires. Do you see that?

4 A. Yes.

5 Q. So, again, this alert that we're looking at for 64556
6 alerted for the amount of incoming and outgoing wires,
7 correct?

8 A. That was part of it.

9 Q. And the other part of it was the number of wires coming
10 in and going out of the account; is that true?

11 A. Yes.

12 Q. And if we look down below, we're going to highlight the
13 total of the incoming wires was \$1.463 billion. Do you see
14 that?

15 A. Yes.

16 Q. And then we're going to jump down below a few blocks and
17 look at the outgoing wires just to compare them. And the
18 outgoing wires, there was 386 of them and those wires
19 totaled \$1.456 billion, right?

20 A. Yes.

21 Q. So, again, we have pretty close amounts of billions of
22 dollars going in and out of the account, right?

23 A. Yes.

24 Q. Is this a pattern that you're seeing, where in the alert
25 before for the four months total you had the 2.5 billion

1 going in and out and now for these two months you've got
2 \$1.4 billion going out?

3 A. It's similar activity.

4 Q. And looking at the patterns like that of similar amounts
5 of high value of numbers going in and out an account for
6 multiple -- for a period of time could be indicative of a
7 pattern, right?

8 A. It could be.

9 Q. And are patterns of potentially unusual activity, that's
10 something that the analysts were looking for in determining
11 whether or not transaction activity could potentially be
12 suspicious?

13 A. Could you repeat that?

14 Q. Sure.

15 A. It was kind of long.

16 Q. I'll go slower. I'm sorry. Patterns of potentially
17 unusual activity is something that the analysts were looking
18 for in determining whether activity could be potentially
19 suspicious?

20 A. Yes.

21 Q. Ms. Pesch, do you agree that in a checking account, a
22 small business checking account, like Petters Company, Inc.
23 had, if there was multiple months where billions of dollars
24 for similar amounts of money going in and out of the
25 account, is that something that would at least be

1 interesting to you as you were determining whether or not
2 that activity that had alerted was potentially suspicious?

3 A. Yes.

4 Q. And do you agree that on a small business checking
5 account like the Petters Company, Inc. account, where
6 billions of dollars for similar amounts were going in and
7 out of the account, that that would be something that you
8 may think was unusual when you were determining whether or
9 not the activity was potentially suspicious?

10 A. I don't remember if I knew it was a small business
11 checking account. Sitting here today, I don't remember
12 that.

13 Q. Let's talk about it as a depository account. Is there a
14 difference in your mind between a small business checking
15 account and a depository account?

16 A. I would say a small business account is a type of
17 checking account.

18 Q. At M&I Bank did they distinguish between a small
19 business checking account and a different checking account?

20 A. I don't remember.

21 Q. Okay. So let me -- I will ask the question, then, with
22 respect to it being a depository account. Okay?

23 A. Okay.

24 Q. The Petters Company, Inc. checking account was a
25 depository account, correct?

Pesch Cross

1 A. Yes.

2 Q. Okay. So knowing that it's a depository account, would
3 seeing billions of dollars going in and out of an account
4 for similar amounts of money over a period of months and
5 months, do you agree with me that that would be something
6 that you would potentially consider to be unusual for you to
7 look into it further when you were investigating and
8 reviewing those very alerts that alerted for incoming and
9 outgoing wires?

10 A. That by itself, without other factors, if there was no
11 other factors and it was just large transactions, that by
12 itself I wouldn't say is suspicious by itself.

13 Q. Ms. Pesch, would it feel right to you -- if looking at
14 an account for extended periods of months that similar
15 amounts of billions and billions of dollars are going in and
16 out of a depository account, would that feel right to you?

17 A. There would be other things that we would look into; and
18 if we didn't see any other concerning activity or factors,
19 then, no, we might not have concerns with that.

20 Q. And, again, we're talking billions of dollars here. And
21 I am trying to figure out if when you were investigating
22 alerts on accounts, had you seen billions and billions of
23 dollars going in and out of a depository account before at
24 M&I Bank from 2005 through 2008?

25 A. I don't remember.

1 Q. Let's stick on 6455 -- I'm sorry, 64556. Let's go to
2 page 39, and I'm going to focus on the second block down
3 from the top, which says, "The majority of checks."

4 So this time, Ms. Pesch, you write and you say,
5 "The majority of checks deposited appear to be employee
6 purchases of event tickets through the company (such as
7 Disney on Ice.) Do you see that?

8 A. Yes.

9 Q. Again, you're writing "majority." Do you see that?

10 A. Yes.

11 Q. So why are you writing "majority"?

12 A. Again, it was an easy and concise way of summarizing the
13 activity.

14 Q. And that was a pattern that you noticed, correct?

15 A. I would say it was an observation that allowed me to
16 summarize the activity easily.

17 Q. And you thought it was significant enough to write down
18 the term "majority"; is that right?

19 A. I don't remember why I wrote "majority" other than I
20 would try to summarize activity.

21 Q. And you thought noting that checks for things like
22 purchasing tickets for Disney on Ice was significant when
23 there was 1.4 -- 1.5 billion dollars going in and out of the
24 account, right?

25 A. I thought it was a way to summarize the activity that I

1 was writing about, which was the checks.

2 Q. Now, if we go back to the previous page, which is
3 page 38, we are going to go to the middle of the page where
4 it says, "Most of the wires" -- or "most wires," and if we
5 can -- I am going to grab the block above it too to have the
6 \$1.463 billion included. Let's just talk about this for a
7 second, Ms. Pesch.

8 So we've got the \$1.463 billion coming into the
9 account through wires, right?

10 A. Yes.

11 Q. And this time you write and you say, "Most wires were
12 from Enchanted Family Buying Company, Nationwide
13 International Resources." Do you see that?

14 A. Yes.

15 Q. And you list a few more entities, right?

16 A. Yes.

17 Q. And there you are noting that most of the wires came in
18 from Enchanted, Nationwide, and then you list the other
19 entities, correct?

20 A. Yes.

21 Q. And so you were actually looking at the wires and you
22 were determining that most of them were coming in from these
23 entities, true?

24 A. And I don't remember working this alert. I can only see
25 what comments I wrote.

1 Q. And based on your comments, am I right?

2 A. Could you repeat your question, then, so I can answer
3 that?

4 Q. I said: "So you were actually looking at the wires and
5 you were determining that most of them were coming in from
6 these entities, true?"

7 A. That's what I wrote, so I think so.

8 Q. And based on looking at your comments, you wrote down
9 "most" and that had significant -- that had some
10 significance to you in order to write down "most wires,"
11 right?

12 A. I would say it was a way of summarizing the activity.

13 Q. And before, with checks, you said "majority." Do you
14 remember that?

15 A. Yes.

16 Q. And this time you said "most," right?

17 A. Yes.

18 Q. Would you -- do you know if you would have looked at the
19 wires to see who the majority of the wires were coming from?

20 A. Again, I don't remember working the alert. I can only
21 go off of the comments.

22 Q. And the checks you noted, that they were for purchases
23 for Disney on Ice, right?

24 A. The checks deposited, yes.

25 Q. Checks deposited are checks coming into the account,

1 right?

2 A. Yes.

3 Q. And incoming wires are wires coming into the account,
4 right?

5 A. Yes.

6 Q. And so do you explain what the source or the reasons
7 for the wires coming into the account were for the
8 \$1.463 billion?

9 A. I summarized the source.

10 Q. Do you explain the reasons for any of the wires?

11 A. Give me a second to read through the comments.

12 (Witness reviews document)

13 A. No, it doesn't appear that for the incoming wires I
14 discuss what they were -- the purpose of the wires.

15 Q. And do you agree with me that you give more level of
16 detail for the reason the checks for Disney on Ice came into
17 the account than you do for the \$1.463 billion in wires that
18 came into the account?

19 A. Yes, the checks have the reference to Disney on Ice and
20 event tickets.

21 Q. If we go back to page 39, we'll go down below the block
22 for Disney on Ice and I am going to keep part of the block
23 on Disney on Ice and I'm going to show you the next block.

24 It reads that checks clearing the account were for
25 utilities, to investment companies and law firms and for

1 other business expenses. Do you see that?

2 A. Yes.

3 Q. And those are checks going out of the account, right?

4 A. Yes.

5 Q. And that's an example of what the use of the funds was;
6 is that true?

7 A. For the checks, yes.

8 Q. Now, if we go back, go back to the previous page, on
9 page 38, we're going to look at the outgoing wires and so we
10 will highlight the outgoing wires of \$1.456 billion. And if
11 we look at those, you write, "Many wires were to," and then
12 you list some entities, right?

13 A. Yes.

14 Q. And one of the entities you list is Metro Gem, right?

15 A. Yes.

16 Q. And then you list Petters Limited, right?

17 A. Petters Limited, yes.

18 Q. That tells you that some of the outgoing wires out of
19 the \$1.456 billion were going to another Petters business;
20 is that true?

21 A. Yes.

22 Q. You don't explain what the use of the funds were for the
23 \$1.456 billion, do you?

24 A. I give a summary of where they went.

25 Q. You don't explain what the use of the funds was, meaning

1 the reason for the outgoing wires, correct?

2 A. I don't explain the reason.

3 Q. And if you just go back to -- on the next page, I'm just
4 going to look at the checks on the next page for -- the
5 reason was for utilities, investment companies and law firms
6 and other business expenses. Do you see that?

7 A. Yes.

8 Q. And you agree that you gave more level of detail to
9 those particular checks going out of the account than you do
10 for the \$1.456 billion in wires going out of the account?

11 A. Can you explain what you mean by "level of detail"?

12 Q. Sure. If we look at the checks going out of the
13 account, you actually explained what they were for, right?

14 A. I give a summary of some of them, yes.

15 Q. And is that what -- Ms. Pesch, is that you were trying
16 to do, was explain what they were being used for?

17 A. I was explaining the purpose of the check that I could
18 read on that memo line.

19 Q. And I'm just going back to the outgoing wires and I am
20 just looking at the outgoing wires for the \$1.456 billion.
21 You don't explain what the purpose or the reason was for any
22 of the outgoing wires, do you?

23 A. No.

24 MR. COLLYARD: Your Honor, would you like me to
25 stop?

1 THE COURT: We have five more minutes. So if you
2 are moving to a different subject or manner of questioning,
3 then this is a good time to stop.

4 MR. COLLYARD: I would be shifting gears.

5 THE COURT: Okay. Then, Members of the Jury, we
6 will take our lunch break now. Please be ready to come back
7 to the courtroom at 1:00.

8 Please remember my instructions. I won't repeat
9 them this time. But please don't discuss this case with
10 anyone. Don't let anyone discuss this case with you or
11 within your hearing. And I hope you have a great lunch.

12 All rise for the jury.

13 (Jury excused)

14 **IN OPEN COURT**

15 **(JURY NOT PRESENT)**

16 THE COURT: And you are free to have a lunch -- a
17 good lunch too. It is as if you were on the witness stand,
18 however, during that lunch break. So you are not to discuss
19 your testimony with anyone during that period of time.
20 Okay? And so you are free to go.

21 I will ask counsel where we are with regard to our
22 afternoon session. And so everyone may be seated. I will
23 get an understanding of what to expect. Counsel?

24 MR. GLEESON: I don't know where we are with
25 regard to our afternoon session, but I did have an

1 application. Is that what the Court wanted me to address?

2 THE COURT: Pardon me?

3 MR. GLEESON: Did you want me to address the
4 application that I mentioned earlier?

5 THE COURT: I want to address the application, and
6 I also want an understanding of what we expect for the rest
7 of the day.

8 MR. GLEESON: On the latter point, maybe we should
9 hear first from Mr. Collyard. I don't know how much more he
10 has with regard to -- and we would like to -- we've got a
11 couple of witnesses here from Milwaukee who have been here a
12 couple of days. So it would be nice for us to know if we
13 can cut one or both of them loose.

14 But let me -- I think it best if we hear first
15 from Mr. Collyard, Judge.

16 THE COURT: Very well.

17 MR. COLLYARD: My best estimation, Judge, is
18 probably another two hours.

19 THE COURT: You said another two hours?

20 MR. COLLYARD: Another two to two and a half hours
21 with this witness, yes. I would hope to be able to get it
22 done sooner, but it may take that long, depending on how it
23 goes.

24 Thank you.

25 MR. GLEESON: And, Judge, on that score, we'll

1 have -- Ms. Momoh will have an examination. I do think --
2 maybe I should defer to her at the moment. I think it's
3 almost inconceivable we get to the end of the day and
4 Ms. Pesch is off the stand.

5 So we very much would like to have these two other
6 AML witnesses be able to return to Milwaukee. They are
7 going to have to come back.

8 THE COURT: Okay. I'll allow you to consult with
9 each other about whether that is a reasonable --

10 MR. GLEESON: We will.

11 THE COURT: -- request and explanation for what
12 should come next and who should be released at least for
13 today, and you can advise me at 1:00.

14 MR. GLEESON: Great. Do you want to hear this
15 application? It's brief.

16 THE COURT: Pardon me?

17 MR. GLEESON: Do you want to hear the application
18 I wanted to make?

19 THE COURT: Yes, please.

20 MR. GLEESON: It's just with regard to "willful
21 blindness," Judge, a term that's kind of prominent in the
22 case. And it wears two hats.

23 It's obviously part of the evidence. It's
24 referenced in the training for the AML folks. It comes up
25 in the testimony. We haven't objected because it's fair

1 ground.

2 But another hat that it wears is it's bound up in
3 the *mens rea*, in the mental state that's required in order
4 for Mr. Kelley to prevail on its claim -- in his claim.

5 And as the witnesses testify as to their
6 understanding about willful blindness, that's fine, but to
7 the degree that willful blindness wears, like, a legal hat
8 and is part of and is bound up in the bad-faith instruction
9 with regard to the *mens rea* for the MUFA claim, to the
10 extent it describes the mental state that needs to be proved
11 by Mr. Kelley, that's -- with respect, that's the Court's
12 business and you will instruct the jury at the end of the
13 case.

14 All we ask for is that -- a brief instruction now
15 to tell that to the jury, and I'll just state quickly what
16 we suggest. I don't think there's any magic to any
17 language, but the gist of what we want you to tell the jury
18 now, as it hears so many witnesses address it, is as
19 follows:

20 You've heard testimony about willful blindness.
21 That's a term used in AML training, and so it is a proper
22 ground for testimony and it's related to the facts of the
23 case.

24 But willful blindness is also a legal term. It's
25 closely related to the state of mind Mr. Kelley must prove

1 in his case. I'll give you instructions at the end of the
2 case about what the legal phrase means. The testimony of
3 witnesses about their understanding of willful blindness
4 cannot properly be viewed by you as stating the law.

5 We just want that clarity because we think there
6 is confusion that inheres in willful blindness being both a
7 factual dimension in the case and a legal dimension. That's
8 my application.

9 Thank you.

10 MR. MARDER: Good afternoon, Your Honor. David
11 Marder responding very briefly.

12 THE COURT: Good afternoon.

13 MR. MARDER: Your Honor, at the conclusion of the
14 case the Court is going to instruct the jury about all the
15 relevant legal principles that are at issue in this case.
16 We see no reason why willful blindness is a particular topic
17 that needs to be raised mid trial. There are many legal
18 issues that are at issue, and they can all be raised at the
19 end of the case.

20 This is the first time we're hearing this
21 instruction, so it's hard for us to address it or respond to
22 it on the fly, but we just don't see the need to have an
23 interim instruction when the parties have submitted
24 instructions for the closing and that the Court will
25 consider them in due course.

1 THE COURT: Thank you, Counsel. I have heard your
2 positions on the matter and will rule before the jury
3 returns.

4 Have a good lunch.

5 COUNSEL: Thank you, Your Honor.

6 (Lunch recess taken at 12:04 p.m.)

7 * * * * *

8 (1:15 p.m.)

9 **IN OPEN COURT**

10 **(JURY PRESENT)**

11 THE COURT: You may be seated. And good
12 afternoon.

13 Counsel, are we ready to proceed?

14 MR. COLLYARD: We are, Your Honor.

15 THE COURT: You may do so.

16 MR. COLLYARD: Thank you, Your Honor.

17 THE COURT: You're welcome. Counsel, you may
18 proceed.

19 BY MR. COLLYARD:

20 Q. Good afternoon, Ms. Pesch.

21 A. Good afternoon.

22 Q. Welcome back.

23 A. Thank you.

24 Q. What I'd like to do is I would like to go back to the
25 alert we were looking at in Exhibit 183, and it's

Alert 60827. And on Exhibit 183, we're going to go to page 28.

A. Just a moment. 60827?

Q. Yeah. So it's Exhibit 183 and it's page number 28 for the alert of 60827.

You remember you and I were talking about checks that were written on the account; do you remember that?

A. Yes.

Q. And if we go down below towards the bottom of the page there, that second to last box where it says, "Other debits."

"Other debits -- "Checks clearing the account were for loan payments, utilities, investments companies and law firms." Do you see that?

A. Yes.

Q. And as we talked about, those were checks that were being written on the account, right?

A. Yes.

Q. So those checks were going out of the account and going to those entities or for those purposes, right?

A. Yes.

Q. Now, you don't mention in this alert for 60827 that there were any checks that were being written out of the account going to individuals, do you?

A. In this alert? No.

1 Q. And this entry here shows that you had looked at these
2 checks, correct?

3 A. I wrote about the checks.

4 Q. And you wrote about the checks that you had reviewed and
5 studied and looked at, right?

6 A. About the checks I looked at. I don't think I would use
7 the word "studied."

8 Q. Okay. Would you use the word "analyzed"?

9 A. Sure.

10 Q. Now, I had mentioned at the beginning of 60827 that the
11 alert was for incoming and outgoing wires, right?

12 A. Yes.

13 Q. Was the alert for checks?

14 A. No.

15 Q. And why was it that you were looking at checks on the
16 account?

17 A. We were supposed to look at all of the account activity.

18 Q. So even though the alert was for billions of dollars
19 going in and out of the account, you went and looked at
20 checks too?

21 A. Yes.

22 Q. And when we were talking earlier, we were talking about
23 from -- I believe it was from Exhibit 398 how you look at
24 everything. Do you remember that?

25 A. Yes.

1 Q. And when you are looking at everything, you don't just
2 look at what is being alerted. So, for example, if it
3 was -- if the alert was for incoming and outgoing wires, you
4 would look at everything, including checks; is that right?

5 A. Yes.

6 THE COURT: Ms. Pesch, would you move the base of
7 the microphone a little closer so that -- I'm having trouble
8 hearing you.

9 THE WITNESS: Is that better?

10 THE COURT: That's must better. Thank you.

11 MR. COLLYARD: Can you hear me okay, Your Honor?

12 THE COURT: I can hear you. I want to make sure
13 that I can hear and everyone else can hear Ms. Pesch. Thank
14 you.

15 MR. COLLYARD: Thank you.

16 BY MR. COLLYARD:

17 Q. Ms. Pesch, let's go to Exhibit 185-A. So that would be
18 in your second volume. Are you there, Ms. Pesch?

19 A. Yes.

20 Q. Now, before I talk about this exhibit, let's just back
21 up. For Alert 60827, if you remember, the time period for
22 that alert, where you were reviewing the activity, was from
23 November of 2005 up through February of 2006. Do you recall
24 that?

25 A. I'm sorry. For which alert?

Pesch - Cross

1 Q. 60827.

2 A. Okay. Yes.

3 Q. If you take a look at Exhibit 185, tell me if you agree
4 that these are copies of checks that were written on the
5 Petters Company, Inc. account.

6 And, for example, if we just turn to page 9 of
7 Exhibit 185-A -- are you there, Ms. Pesch?

8 A. Yes.

9 Q. -- is this a check, that appears in Exhibit 185-A at
10 page 9, a check that was written on the Petters Company,
11 Inc. account?

12 A. Sorry. Can you repeat all that again?

13 Q. Yes. Sorry. Is this a check that was written on the
14 Petters Company, Inc. account?

15 A. Yes.

16 Q. And this check is dated December 27th of 2005; is that
17 right?

18 A. Yes.

19 Q. And that falls within the time period that you reviewed
20 alert activity and checks for Alert 60827; is that correct?

21 A. Yes.

22 Q. And this is a check written from Deanna Munson and
23 signed by Deanna Munson. Do you see that?

24 A. It's not from Deanna Munson. I would say it was written
25 by Deanna Munson.

1 Q. I'm sorry. Thank you for that. It was written by
2 Deanna Munson to Deanna Munson and signed by Deanna Munson;
3 is that true?

4 A. Yes.

5 Q. And it was for \$500,000?

6 A. Yes.

7 Q. And you didn't mention this check in your alert for
8 60827, did you?

9 A. No.

10 Q. If we go to page 14, I'll show you another check. This
11 is a check dated December 27th of 2005; is that right?

12 A. Yes.

13 Q. And this is a check that was written to a Robert White
14 signed by Deanna Munson; is that true?

15 A. Yes.

16 Q. And that's for \$700,000?

17 A. Yes.

18 Q. You didn't mention this check in your alert for 60827
19 either, did you?

20 A. No.

21 Q. And by looking at this check, Ms. Pesch, you can't
22 determine by looking at this check what the legitimate
23 business purpose was for this check, can you?

24 A. I see that it's at the end of the calendar year for an
25 individual.

1 Q. Can you tell what the legitimate business purpose is for
2 this check?

3 A. With certainty, no.

4 Q. And this is a check for \$700,000 in cash, correct?

5 A. It's a check for \$700,000, not cash.

6 Q. Not cash because it's a check?

7 A. Yes. And written out to Robert White, not cash.

8 Q. If we go to page 16, this check was dated January 3rd of
9 2006, correct?

10 A. Yes.

11 Q. You told me the other one was written at the end of the
12 year. This one is written at the beginning of the year,
13 right?

14 A. Yes.

15 Q. And this one is written to Deanna Munson and signed by
16 Deanna Munson, correct?

17 A. It looks like there's an additional signature, but it
18 appears Deanna's signature is also on there.

19 Q. And this check is for \$1 million, right?

20 A. Yes.

21 Q. Now, you said it looks like there's an additional
22 signature. And if you look where that additional signature
23 is, can you read what it says?

24 A. No.

25 Q. Does it say, "Two signatures required over \$5,000"?

1 A. It appears to, but part of it is covered.

2 Q. And you understand that when companies have a depository
3 account or a checking account, sometimes it's required that
4 two signatures are on a check that is for \$5,000 or more; is
5 that right?

6 A. I guess if the check says so.

7 Q. Well, you understand that that is actually a procedure
8 that goes in place at the bank sometimes, right?

9 A. I don't remember that.

10 Q. Have you ever encountered that, where there needs to be
11 two signatures on a check for a certain amount, in a
12 depository account?

13 A. Yes.

14 Q. And this would be consistent with that requirement,
15 right?

16 A. If the requirement was for two signatures over a certain
17 amount and there were two signatures, that would be
18 consistent with that requirement.

19 Q. And what the bank -- and correct me if I'm wrong, but
20 what the bank has, is it has a policy for that to happen
21 if -- I'm sorry. Let me back up.

22 Do you know what a signature card is?

23 A. Yes.

24 Q. What is a signature card?

25 A. A signature card lists the people who are authorized to

conduct transactions on that account.

Q. So if Petters Company, Inc., the checking account or the depository account, they signed a signature card that required two checks -- or two signatures on the account, there would be a requirement that there be two signatures for over a certain amount; is that right?

A. I don't remember the requirements for signature cards at M&I.

Q. But if that were the case, would I be correct?

A. If that were the case, yes, but I don't remember the requirements for signature cards.

Q. Okay. Well, we'll come back to that in a little bit.

Let me show you -- let me show you another check.

Let's go to page 17. And this is a check again dated January 3rd, 2006, right?

A. Yes.

Q. And the last check that we looked at for \$1 million was dated January 3rd of 2006, correct?

A. Yes.

Q. Now, this check is also written to Deanna Munson and signed by Deanna Munson for \$2.5 million, right?

A. Yes.

Q. So we've got \$3.5 million in one day in checks that Deanna Munson has written to herself, correct?

A. It appears so.

1 Q. You did not note this check in your Alert 60827, did
2 you?

3 A. No.

4 Q. And you didn't note the fact that Deanna Munson had
5 written \$3.5 million to herself in checks on the same day,
6 correct?

7 A. I would have to go back and check the date of the first
8 check to see if -- I thought it was the month before.

9 Q. Well, I'll help you out. It's page 16. And the date is
10 January 3rd of 2006, right?

11 A. Uh-huh.

12 Q. For \$1 million?

13 A. Yes.

14 Q. And then the next check that we were just talking about
15 is on page 17. That's January 3rd of 2006 for \$2.5 million,
16 right?

17 A. Yes.

18 Q. And my question was: You didn't note in your comments
19 in Alert 60827 that there happened to have been \$3.5 million
20 of checks written on the account where Deanna Munson wrote a
21 check to herself for that amount of money, correct?

22 A. Sorry. I thought you said three checks. No, I did not
23 note these checks.

24 Q. If we go to page 18, this check is dated February 16th
25 of 2006, correct?

1 A. Yes.

2 Q. And it's a check written to Bob White and signed by
3 Deanna Munson, correct?

4 A. Yes.

5 Q. And that's for half a million dollars?

6 A. Yes.

7 Q. And you did not note that check in your comments on
8 60827 either, did you?

9 A. No.

10 Q. And, again, this one has the requirement of two
11 signatures over \$5,000. Do you see that?

12 A. Yes.

13 Q. And this is for the time period of February of 2006.
14 The last checks that we saw were for January of 2006. But
15 there's only one signature. Do you know why that would be?

16 A. No.

17 Q. This is the same exact checking account, correct, for
18 both sets of checks?

19 A. It's the same checking account. It looks like they
20 could be from different checkbooks.

21 Q. Go to page 11. Now we're back to that December 27th
22 date of 2005. Do you see that?

23 A. Yes.

24 Q. There's a check written to Jim Wehmhoff for \$1 million.
25 Do you see that?

Pesch - Cross

1 A. Yes.

2 Q. Signed by Deanna Munson; is that right?

3 A. Yes.

4 Q. You didn't note this check in your alert for 60827
5 either, did you?

6 A. No.

7 Q. Ms. Pesch, if you would have seen checks where Deanna
8 Munson was writing millions of dollars in checks to herself,
9 would you have at least thought that that was interesting
10 enough to have noted or to potentially look into?

11 A. I don't remember this alert or all the other activity in
12 the account that I was looking at, so I can't say.

13 Q. Does a person writing checks to themselves for millions
14 of dollars on a depository account when it's not a payroll
15 account, would that strike you as something that would be
16 unusual enough that you'd want to go and look into it?

17 A. I guess I had no indication that these weren't payroll,
18 so I guess, no, I wouldn't agree.

19 Q. Well, do you have any indication that these are payroll?

20 A. It doesn't say payroll.

21 Q. And you wouldn't assume that it's payroll, right?

22 A. I don't -- I'm not sure. I don't remember working this
23 alert.

24 Q. Well, do you remember earlier when I showed you those
25 PowerPoint and the PowerPoint talked about how don't make

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1 assumptions of legitimacy; do you remember that?

2 A. Yes.

3 Q. You wouldn't assume that this would be a payroll
4 account, right?

5 A. I don't remember what I was thinking when working this
6 alert.

7 Q. You can put that one aside, Ms. Pesch. Let's go to
8 Exhibit 188. That would be in your second volume.

9 If you take a look at -- can you please take a
10 look at Exhibit 188 and tell me if that's an e-mail exchange
11 that you are on.

12 A. Yes.

13 Q. And if you take a look at page 2, tell me if that's an
14 e-mail from Shandra Roehrig to you.

15 A. Yes.

16 Q. And it's dated September 26th of 2008, correct?

17 A. Yes.

18 MR. COLLYARD: Your Honor, I offer Plaintiff's
19 Exhibit 188.

20 MS. MOMOH: No objection, Your Honor.

21 THE COURT: Exhibit 188 is received.

22 BY MR. COLLYARD:

23 Q. Let's put up page 2. Who's Shandra Roehrig?

24 A. She was the lead analyst.

25 Q. She was an analyst or she was a manager?

1 A. I remember her being a lead analyst. She wasn't the
2 manager.

3 Q. So Ms. Roehrig is writing to you on September 26, 2008
4 and asking you to do something, right?

5 A. Yes.

6 Q. And I'll just go through it here real quickly. She
7 says, "I have assigned an alert to you for Petters Company,
8 Inc. This is a customer for whom we have reviewed almost on
9 a monthly basis since 2005 and have always closed the alert
10 to expected or quick close for Qualified Peer review." Do
11 you see that?

12 A. Yes.

13 Q. And then she says -- by the way, if Ms. Roehrig was a
14 lead analyst, would she be assigning you work like this?

15 A. She could.

16 Q. In the next paragraph Ms. Roehrig says, "A subpoena was
17 received for Petters Company, Inc. with specific interest in
18 activities performed by Tom Petters himself." Do you see
19 that?

20 A. Yes.

21 Q. And it says, "On September 24 the headquarters was
22 raided by the federal agents." Do you see that?

23 A. Yes.

24 Q. And it says "the account were seized." Do you see that?

25 A. The -- I see "the funds in the account were seized."

1 Q. Oh, I'm sorry. You're right.

2 "On Thursday, September 25, the funds in the
3 account were seized." Do you see that?

4 A. Yes.

5 Q. And what is meant by "seized"?

6 A. I think, like, frozen.

7 Q. They were seized by the federal government?

8 A. I guess I don't remember exactly what that meant.

9 Q. Okay. Well, in the next paragraph she makes a request
10 to you, right?

11 A. Yes.

12 Q. And she's asking you in this paragraph to go back and
13 revisit the account for review, right?

14 A. Yes.

15 Q. And she says, "I realize we have already closed alerts
16 covering activity for the past three months, but we'd like
17 to take a second look at the wire activity." Do you see
18 that?

19 A. Yes.

20 Q. So what's she's saying is she's saying there were alerts
21 that were already closed over the last three months, but she
22 wants you to go back to those same alerts and take a look at
23 that same exact activity, correct?

24 A. Yes.

25 Q. And she says, "specifically looking for any unusual or

1 identifiable patterns of payees or flow of funds." Do you
2 see that?

3 A. Yes.

4 Q. And what did you understand her to be asking you to do?

5 A. To look for unusual activity.

6 Q. And patterns of flow of funds?

7 A. Yes.

8 Q. And then she tells you that you should -- you can start
9 with three months to see if there are any patterns you
10 identify have been ongoing, right?

11 A. Yes.

12 Q. And when you were going to look for patterns, you'd be
13 looking at, for example, whether or not there were similar
14 amounts of large dollars of money going in and out of the
15 account, correct?

16 A. That wasn't specified in this e-mail.

17 Q. I understand that she doesn't specifically say any
18 patterns, but would that have been one of the patterns that
19 you would have looked for?

20 A. I was looking for any unusual activity, including
21 potential patterns.

22 Q. And would that have been one of the potential patterns?

23 A. Potentially.

24 Q. And then Ms. Roehrig tells you that you're free to
25 expand the time period if you feel it's necessary, right?

Pesch Cross

1 A. Yes.

2 Q. And you actually went and did this, correct?

3 A. Yes.

4 Q. All right. Let's go to Exhibit 189, and if you can
5 please take a look at Exhibit 189 and tell me if that's a
6 document that you wrote.

7 A. It appears so.

8 Q. Is this the analysis that you did at Ms. Roehrig's
9 direction?

10 A. A draft of that analysis.

11 Q. Okay. This is a draft of that analysis.

12 And you're familiar with this analysis and
13 document, right?

14 A. Yes.

15 MR. COLLYARD: Your Honor, I offer Plaintiff's
16 Exhibit 189.

17 MS. MOMOH: No objection, Your Honor.

18 THE COURT: Exhibit 189 is received.

19 BY MR. COLLYARD:

20 Q. So, Ms. Pesch, what I'd like to do is just cover some of
21 the points on the first page. I don't want to sit and read
22 the whole document, but I want to cover some of the points
23 on it to give us some context. Then I want to look at some
24 of the analysis that you did. Okay?

25 A. Okay.

Q. So let's just go to the second paragraph. It reads,
"According to Forbes, Petters Group is a private has
purchased several distressed companies and tries to turn
them around." Do you see that?

A. Yes.

Q. That's talking about Petters Group and not Petters
Company, Inc., correct?

A. Yes.

Q. And it says, "Their holdings and subsidiaries include
Polaroid, Sun Country Airlines and Fingerhut," right?

A. Yes.

Q. And, again, that's talking about Petters Group, not
Petters Company, Inc.?

A. Yes.

Q. In the next paragraph you say, "Petters Company, Inc.
has held a business checking account at M&I Bank since
1999," right?

A. Yes.

Q. And then you say, "Signers on the account are Tom
Petters and Deanna Coleman," right?

A. Yes.

Q. So that would mean they would have been authorized, both
of them would have been authorized to sign checks on the
account?

A. At the time that I wrote this, yes.

1 Q. And then you say, "The account is being reviewed from
2 January 1 through August 31 at the request of M&I Corporate
3 Compliance." Do you see that?

4 A. Yes.

5 Q. And so before Ms. Roehrig had asked you to go back for
6 three months, and it looks like you're going back for eight
7 months in 2008; is that right?

8 A. Yes.

9 Q. Was that your decision or did somebody else tell you to
10 go back eight months instead of three months?

11 A. I don't remember.

12 Q. In the next paragraph it explains that, "Mr. Petters and
13 Petters Company, Inc. are being investigated for a
14 multi-billion dollar fraud scheme. The goal of the scheme
15 was to get investors to provide money and financing for
16 Petters Company, Inc." Do you see that?

17 A. Yes.

18 Q. And that was information that you went out and
19 researched and found on the internet; is that what you did?

20 A. Based on how this was written, yes.

21 Q. And then down below, the next paragraph, you say, "The
22 scheme entailed soliciting investors to PCI by promising
23 that their investments were secured in property, principally
24 retail goods, which were purchased at wholesale from vendors
25 such as Nationwide International Resources and Enchanted

1 Family Buying Company." Do you see that?

2 A. Yes.

3 Q. And then you go on to explain that those were sold --
4 supposedly sold to retailers such as Walmart and Sam's Club
5 for profit, right?

6 A. Yes.

7 Q. The analysis that you were doing, were you basing your
8 analysis on this being the business model?

9 A. What analysis?

10 Q. The analysis that you did when you went back and looked
11 at the account activity from January 1 through August 31 of
12 2008.

13 A. I was reporting what I found in the news articles. I
14 haven't done any analysis in the case at this point.

15 Q. Was this a draft of your analysis?

16 A. An incomplete draft, yes.

17 Q. When you did your analysis, did you base your analysis
18 off what I just described here as the business model of
19 Petters Company, Inc.?

20 A. I used the information in the articles and applied it to
21 what I was seeing in the transaction account.

22 Q. And when you say "what I was seeing in the transaction
23 account," you're talking about looking at the incoming and
24 outgoing wires, for example?

25 A. Yes.

1 Q. Or any checks that were written on the account, right?

2 A. Yes.

3 Q. Then down below that you say, "However, the purchase
4 orders and the sales orders were phony and the transactions
5 never occurred. The affidavit said that Petters used the
6 money raised through PCI for other business ventures and to
7 support an extravagant lifestyle." Do you see that?

8 A. Yes.

9 Q. Would that activity that you are describing there be
10 consistent or indicative of money laundering?

11 A. It could, yeah.

12 Q. Let's go to the next page. I just want to talk about
13 some of your analysis here. So we're on page 2 of
14 Exhibit 189, and in the middle of the page you say -- where
15 it says, "The monthly values" and you provide a chart, and
16 down below that you have a box for "difference." Do you see
17 that?

18 A. Yes.

19 Q. Let's talk about this. You say, "The monthly values of
20 credits and debits to the account during the review period
21 are shown below." Do you see that?

22 A. Yes.

23 Q. And then you've got these columns where you say, "Total
24 Value of Credits" and "Total Value of Debits," right?

25 A. Yes.

1 Q. And then you are listing all of the months from January
2 of -- January to August of 2008, correct?

3 A. Yes.

4 Q. And, by the way, if we just pause here for one second,
5 alerts on the Petters Company, Inc. account had gone off
6 during this entire time period, correct?

7 A. I don't remember the timing of all the alerts, so I
8 couldn't say that for certainty without being able to refer
9 to documentation.

10 Q. Is that what you believe as you're sitting here today,
11 that alerts had gone off during this time period and you
12 were going back and looking at the transaction activity on
13 those alerts?

14 A. Yes, I believe they were alerts during that time period.

15 Q. And what you're doing here, Ms. Pesch, is you're looking
16 at the monthly values of the money going in and the money
17 going out, right?

18 A. Yes.

19 Q. And from this particular time period, it's 2.869 billion
20 going in and 2.869 billion going out, right?

21 A. Yes.

22 Q. Very similar amounts of money, correct?

23 A. Yes.

24 Q. And you actually note that down below, don't you?

25 A. Yes.

1 Q. And you actually call out that the difference was 189
2 grand, right?

3 A. Yes.

4 Q. And then if we go down to just the next part of this to
5 show that as well, and what I'd like to do is have the end
6 of the day balance showing with the graph. There we go.

7 And you say, "The end of the day balance in the
8 account during the review period never exceeded
9 \$1.7 million." Do you see that?

10 A. Yes.

11 Q. And what are you explaining there?

12 A. How much money was in the account at the end of the
13 business day.

14 Q. And so when you are saying -- what you are saying here
15 is you're looking at all the money going in and out of the
16 account. At the end of the day there was only \$1.7 million
17 left in the account; is that right?

18 A. Yes.

19 Q. And, Ms. Pesch, do you agree that when there's large
20 amounts of money going in and out of an account and there's
21 a low account balance at the end of the day, that that could
22 be indicative of suspicious activity?

23 A. Not necessarily by itself.

24 Q. Sure, I understand, but that could be one of the factors
25 that leads an analyst to conclude that that activity could

1 be interesting, right?

2 A. By itself, that is not suspicious.

3 Q. I'm sorry. Let me try it again.

4 When you have large amounts of money going in and
5 out of an account and at the end of the day the balance is
6 low, that could be one of the factors that goes into an
7 analysis as to whether or not that activity is potentially
8 suspicious?

9 A. If there were other suspicious factors present that you
10 were aware of, that could be included if it made sense based
11 on the review.

12 Q. And right up above here you say, "Difference between
13 credits and debits."

14 The difference between the credits and debits of
15 the money going in and out of the account, if that
16 difference is small, that could be one of the factors that
17 would go into being indicative of potentially suspicious
18 activity, right?

19 A. By itself, I would say no.

20 Q. And it could be one of the factors that goes into your
21 analysis; is that right?

22 A. In some cases you could include that with other
23 suspicious factors.

24 Q. So, for example, if the difference -- if there's
25 billions of dollars going in and out of the account and the

1 difference is small, and in addition to that the -- you have
2 at the end of the day a low balance, those could be added
3 together and be part of the analysis that goes into whether
4 or not there was potentially suspicious activity, right?

5 A. If there were other suspicious factors present, they
6 could be included in some circumstances.

7 Q. And I want to -- while I have these two pieces
8 highlighted, I want to include the rest of the graph.

9 And, Ms. Pesch, this is -- you were looking at
10 this particular activity, right?

11 A. Yes.

12 Q. And you were doing that for a reason, right?

13 A. Yes.

14 Q. And one of the reasons was because Ms. Roehrig had asked
15 you to look for unusual patterns of activity, correct?

16 A. Yes.

17 Q. And this is what you chose to do, right?

18 A. That's one of the things I did in this case review.

19 Q. Now, how you have the numbers here, this is something
20 that you could have done, for example, back when you did
21 your analysis on your alerts for 60827 and 64556, right?

22 A. This is the type of analysis you would do at the case
23 level if you had suspicious factors that led you to escalate
24 the alert. This isn't the type of analysis you would do for
25 an alert.

1 Q. You could have done this for an alert, right?

2 A. It wasn't our practice to do this for an alert if there
3 weren't other suspicious factors present.

4 Q. Ms. Pesch, I'm just asking if you could have done it for
5 those alerts.

6 A. It was --

7 MS. MOMOH: Objection, Your Honor, vague as to
8 time frame.

9 THE COURT: Overruled.

10 MS. MOMOH: And asked and answered, Your Honor.

11 THE COURT: Overruled. You may answer if you can.

12 THE WITNESS: Can you repeat the question?

13 BY MR. COLLYARD:

14 Q. Sure. You could have done this very analysis for when
15 you reviewed your alerts on 60827 and 64556?

16 A. This was not our practice to do at the alert level if
17 there weren't other suspicious factors that made us escalate
18 that alert.

19 Q. Let me ask it a little bit differently. Was it
20 possible, if you had wanted to, to do this very analysis on
21 Alerts 60827 and 64556?

22 MS. MOMOH: Same objection, Your Honor, vague as
23 to time, calls for speculation.

24 THE COURT: Overruled. You may answer.

25 THE WITNESS: This wasn't something that we would

1 have done for an alert without the presence of suspicious
2 factors.

3 BY MR. COLLYARD:

4 Q. So I'm going to ask you it -- I'm going to try to ask
5 you my question a little bit differently, Ms. Pesch, just to
6 make sure that -- I'm trying to be as clear as possible, and
7 I'm sorry if I'm not. And I'm going to try to do this in a
8 "yes" or "no" fashion, so I'm going to try and phrase my
9 question that will call for a "yes" or "no" response.

10 My question is: You could have done this same
11 exact analysis, as you have written here, for Alert 60827
12 and 64556? "Yes" or "no," Ms. Pesch.

13 MS. MOMOH: Objection, Your Honor.

14 THE COURT: Sustained. You may answer the
15 question.

16 THE WITNESS: What do you mean by "could have
17 done"?

18 BY MR. COLLYARD:

19 Q. It would have been possible for you to do it?

20 A. Yes.

21 Q. And all of this type of information that you list here,
22 that type of information was available back for Alert 64556
23 and 60827?

24 A. No.

25 Q. The information for the values going in and going out of

1 the account during that time period, for example?

2 A. You didn't clarify the information. You just said all
3 the information. Most of this information that we've looked
4 at came out after the raid at the end of September 2008.

5 Q. I'm sorry. I'm sorry, Ms. Pesch. I'm just focused
6 on -- when I say "all this" -- I'm sorry. You're right.

7 This information, these numbers, these types of
8 numbers, the chart that you did, what I'm saying is that
9 type of information, that very type of information would
10 have been available for you to go and gather when you were
11 doing Alerts 60827 and 644 -- 64556, for those particular
12 alerts?

13 A. The values were available.

14 Q. And you could have compared the difference between the
15 credits and debits, for example, right?

16 A. It was possible.

17 Q. And you could have also looked to see what the end of
18 the balance was at the end of the day for the values going
19 in and out of the account during those time periods for
20 those alerts?

21 A. Yes.

22 Q. So let's flip the page. We'll talk more about some more
23 analysis you did.

24 Now, this is page 3, Exhibit 189, page 3. I'll go
25 to the middle of the page where you see "Enchanted Family

Pesch Cross
1 Buying Company." Do you see that, Ms. Pesch?

2 A. Yes.

3 Q. I'm sorry. Are you there?

4 And what you did here is you looked at the
5 incoming wires from Enchanted Family Buying Company, right?

6 A. Yes.

7 Q. And you noted both the number of wires coming in and how
8 much those wires were for, right?

9 A. I'm really not comfortable verifying information in this
10 document because this was a draft, an incomplete draft, and
11 I -- there were changes that were made and I don't remember
12 what the changes were between this and the final.

13 Q. Did it appear to you that what you did was you noted the
14 number of wires and the total value of the wires for
15 Enchanted Family Buying Company during this period of time?

16 A. Yes.

17 Q. And that added up to about \$370 million; is that right?

18 A. In this draft, yes.

19 Q. And I'm not going to quibble with you about whether or
20 not the exact cents or numbers are correct, but this type of
21 information also would have been available to you when you
22 did your alerts for 60827 and 644 -- 64556, right?

23 A. Yes.

24 Q. And if you go down below, let's just do the same thing
25 with Nationwide. It lists Nationwide International

Pesch - Cross
1 Resources, right?

2 A. Yes.

3 Q. And then same exact thing, you looked at the number of
4 wires that Nationwide wired into the account and you looked
5 at the value of those wires that Nationwide wired into the
6 account, right?

7 A. Yes.

8 Q. And it just happens that during this time period, it was
9 \$282 million, right?

10 A. That's what I recorded in this draft of the document.

11 Q. And you say there's -- this was a draft. Do you know
12 that you had a final version of this?

13 A. Yes.

14 Q. And, Ms. Pesch, in order to get this information on the
15 value of wires, you would have had to have been able to get
16 information on those wires, correct?

17 A. Can you clarify what information?

18 Q. Sure. You'd have to see the -- you'd have to know or
19 you'd have to have information about the value of the wires
20 to be able to make your chart, right?

21 A. Yes.

22 Q. Is this one of those examples that you're doing here,
23 where you are looking at the money going in and the money
24 going out and making a chart? Is that one of those flow of
25 funds charts that you would make back when you were an

analyst?

A. Yeah, this could be.

Q. Now, if we stick on incoming wires just real quickly, I'll be done with this in just a minute before we go on to the next one.

I just want to show you Metro Gem. Let's go to page 4. It's Exhibit 189, page 4. And the two boxes up there for Metro Gem, I want to highlight those or bring those up.

And what you did here, Ms. Pesch, is you looked at incoming wires from the Metro Gem entity; is that right?

A. Yes.

Q. And here you did the same thing, you looked at the number of wires and the value of wires, right?

A. Yes.

Q. And if you add up the 85 million and the 104 million, it's about 190 million, correct?

A. Yes.

Q. Now, if we go to -- if we go to -- I'll show you this real quickly. First we have to go to page 7 of Exhibit 189, and it says, "Outgoing wires." Do you see that?

A. Yes.

Q. So now you did the same exact analysis for outgoing wires, correct?

A. Yes.

1 Q. And we'll just go to the Metro Gem ones for outgoing, if
2 we go to page 8. If we go to the Metro Gem box and bring
3 that up, these were the outgoing wires to Metro Gem,
4 correct?

5 A. Yes.

6 Q. And it was for \$190 million, according to your math
7 here, right?

8 A. In this draft, yes.

9 Q. So in this draft you have 190 million coming in from
10 Metro Gem and you have 190 million going out to Metro Gem,
11 right?

12 A. Approximately.

13 Q. Similar amounts of money going in and similar amounts of
14 money going out, correct?

15 A. Yes.

16 Q. And, again, you could have done that type of math or
17 that type of analysis for those Metro Gem wires that we
18 talked about in Alert 60827 and 64556?

19 A. Yes.

20 Q. Let's go to page 10 and go to the bottom where it says,
21 "The incoming and outgoing wires." You say, "The incoming
22 and outgoing wires involve Nationwide International
23 Resources, Enchanted Family Buying, and Deanna Coleman." Do
24 you see that?

25 A. Yes.

1 Q. What are you indicating there?

2 A. I don't know. This is an incomplete sentence and an
3 incomplete draft.

4 Q. Okay. Let's put that one aside, Ms. Pesch.

5 Let's go to Exhibit 333. Are you at Exhibit 333?

6 A. Yes.

7 Q. Can you take a look at Exhibit 333 and tell me if that
8 was your final analysis that you did.

9 A. Yes.

10 Q. If we can -- and you are familiar with Exhibit 333,
11 right?

12 A. Yes.

13 Q. And if you go to -- I'm sorry. Let me do this first.

14 MR. COLLYARD: Your Honor, I offer Plaintiff's
15 Exhibit 333.

16 MS. MOMOH: Objection, Your Honor. Sidebar?

17 THE COURT: You may.

18 Members of the Jury, if you would like to stand
19 and speak among yourselves, you may.

20 MS. MOMOH: Thank you, Your Honor. So this
21 particular exhibit is what is at issue with the trial brief
22 that we submitted this morning with respect to the issue
23 that we raised yesterday. This is the case that Ms. Pesch
24 had written with the information that we are seeking to have
25 redacted.

1 And my colleague and co-counsel will explain for
2 the record the basis of our objection and the authority for
3 our objection, Your Honor.

4 THE COURT: Would you note your appearance.

5 MS. PARLOVECCHIO: Yes, Gina Parlovecchio.

6 THE COURT: Thank you, Ms. Parlovecchio.

7 MS. PARLOVECCHIO: Thank you. So this is the
8 document that presents the SAR disclosure issue. It
9 indicates that Ms. Pesch ultimately recommended that this be
10 elevated for SAR review and that a SAR be filed.

11 This goes to the same Bank Secrecy Act Title 31
12 issue that we put on the record this morning, which
13 prohibits disclosure of the existence of a SAR, the contents
14 of a SAR, the fact that a SAR exists.

15 And so there's several different places throughout
16 the document where it creates -- it not only creates the
17 impression, but it says that a SAR is being recommended for
18 filing.

19 So that is the issue that we put on the record
20 today. And to the extent, Your Honor -- well, first, we
21 would just request two different alternate instructions,
22 which I'll read.

23 One is: We have requested the Court instruct
24 Mr. Collyard that he not ask Ms. Pesch whether or not she
25 recommended filing a SAR or whether a SAR was filed and

1 instruct the jury that this can't be disclosed pursuant to
2 federal law.

3 The reason we're requesting that, Your Honor, is
4 because, as a member of the Anti-Money Laundering Compliance
5 Group, they are trained on the fact that they can't disclose
6 this type of information, that they'll be subject to civil
7 and criminal penalties. So she -- any time that question is
8 going to come up, she's going to be concerned that she's
9 going to be subject to criminal penalties.

10 This is an issue that comes up in criminal trials
11 too, even if it's a money laundering case. The fact that a
12 SAR exists cannot be disclosed to the public, to a jury even
13 if that's the subject of the criminal charge at issue.

14 The only thing that can be presented in court is
15 the documents and the facts that comprise what ultimately
16 went into the SAR, but not the SAR itself, not that a SAR
17 exists. Even, you know, law enforcement officers aren't
18 allowed to disclose that in the public.

19 So that's the reason why this is such a grave
20 issue for Ms. Pesch and then also for the bank.

21 MS. MOMOH: And counsel.

22 MS. PARLOVECCHIO: And counsel.

23 MR. COLLYARD: Your Honor, I read your order. I'm
24 going to comply with your order. Under the order I'm not
25 going to say that a SAR was filed. I'm going to talk about,

1 though, the fact that it merits filing a SAR, which is
2 totally appropriate under your order.

3 Your order restricts me, as I understand it, to
4 just mention that a SAR -- an actual SAR was filed. This is
5 not the SAR. This just says a SAR was filed. I don't have
6 the SAR. I'm not going to ask if a SAR was filed or
7 anything like that.

8 THE COURT: You said you're going to say a SAR was
9 filed, but you are not going to ask --

10 MR. COLLYARD: No.

11 THE COURT: -- whether a SAR was filed.

12 MR. COLLYARD: I'm sorry. No.

13 THE COURT: That's what I just heard you say.

14 MR. COLLYARD: No. So you see the document says,
15 "The activity merits the filing of a SAR."

16 THE COURT: Okay.

17 MR. COLLYARD: So this is their conclusion. I'm
18 not going to say: Was a SAR actually filed? That's how I
19 understand I'm restricted under your order. That was what
20 we had proposed in our motion, which was the basis for your
21 order, as I understand it.

22 We tried to agree that we would redact that
23 portion and not ask that portion, but that doesn't mean that
24 the ultimate conclusion that they make, that the activity is
25 suspicious or that it merits filing a SAR, that's still fair

1 game for me to talk about.

2 MS. PARLOVECCHIO: The problem with that issue,
3 Your Honor, is that it leaves in the jury's -- the question
4 in the jury's mind was a SAR filed. And we can't offer any
5 facts to clarify whether or not a SAR was filed.

6 It leaves the impression that the bank wasn't
7 following its own policies and procedures in filing a SAR
8 once suspicious activity was identified, and so it would
9 mislead the jury and create a 403 problem, Your Honor.

10 MR. COLLYARD: Your Honor, you ruled on this.
11 That is beyond your ruling.

12 THE COURT: Right.

13 MR. COLLYARD: I fully intend to comply with your
14 ruling as an officer of the court. I understand the order.

15 THE COURT: That is right, and so I expect you to
16 comply with the ruling that I have made and that issue has
17 been disposed of by that ruling.

18 MS. PARLOVECCHIO: I understand, Your Honor. I
19 would just ask that, since we're going to proceed in this
20 manner, if Your Honor would offer an instruction to the jury
21 that -- and instruct Ms. Pesch that she's permitted to
22 answer that question and just let her know that there are --
23 you know, she can forego the prohibitions under the Bank
24 Secrecy Act that prohibit her from saying whether she
25 recommended that it merited filing a SAR.

1 MS. MOMOH: Pursuant to the order that was issued
2 today.

3 MS. PARLOVECCHIO: Exactly.

4 MR. COLLYARD: May I, Your Honor?

5 THE COURT: (Indicating.)

6 MR. COLLYARD: Yeah, there's no need for an
7 instruction. There's no need to raise anything to the jury
8 that I'm not going to talk about. So I'm not going to
9 mention that a SAR was filed. There's no mention.

10 If I ask a question about -- asking about whether
11 or not a SAR was filed, you can object, we can have a
12 sidebar, we can deal with it. I'm not going to do that. So
13 there would be no need for confusing the jury based on some
14 instruction that is unnecessary.

15 MS. MOMOH: And, Your Honor, if I may be heard on
16 that?

17 It's not even with respect to his examining of the
18 witness or others that he may examine throughout the course
19 of this trial. He's also about to -- he already has offered
20 this document into evidence.

21 And as my colleague, Ms. Parlovecchio, has already
22 articulated, the information and the statements that are
23 made still raise the question as to what impression would be
24 left on the jurors when his questions are asked.

25 Whether or not he asks about the SAR actually

1 being filed, the document, as we are objecting -- we are
2 objecting to its admissibility. If the document comes in
3 and this language remains, we still have the issue.

4 So it's not just your questions. It's also the
5 information in the document that we're concerned about.

6 THE COURT: Are you offering the document with the
7 information in it that a SAR has been filed?

8 MR. COLLYARD: No. We've redacted that portion of
9 the document.

10 THE COURT: That's what I understood from your
11 statement.

12 MR. COLLYARD: To be clear, Your Honor --

13 MS. MOMOH: Well --

14 MR. COLLYARD: I'm sorry, Ms. Momoh.

15 THE COURT: No. One at a time.

16 MS. MOMOH: Thank you, Your Honor.

17 THE COURT: I want to hear him --

18 MS. MOMOH: Understood.

19 THE COURT: -- and then you will have your turn.

20 MS. MOMOH: Understood.

21 MR. COLLYARD: Remember, Your Honor, I raised this
22 before, that this is the exact line I had up in my opening
23 statement with my slide that was not objected to. It said,
24 "The activity merits the filing of the SAR."

25 So, again, this is all -- this is fully within

1 your order to be able to do those things and talk about
2 that. What I cannot do -- what I cannot say: Was a SAR
3 filed or do you know that a SAR was filed? And I have no
4 intention of doing that.

5 THE COURT: Has the witness been instructed as to
6 the limitations of my order?

7 MR. COLLYARD: I have not -- it's not my witness.
8 I can't talk to her.

9 MS. MOMOH: And we haven't been able to because
10 she's been sequestered since she's been on the stand, so we
11 haven't been able to articulate anything to her.

12 THE COURT: We'll take a break and you can address
13 that issue and you can tell her what I have ruled and the
14 limitations on that.

15 I'm not going to make another ruling. My ruling
16 stands. There's no need to amend the ruling. You need to
17 explain to the witness what the limitations are of her
18 testimony based on the ruling. I have representations from
19 counsel that they are not going to elicit that information.

20 MS. MOMOH: And, Your Honor, I wasn't trying to
21 cut Mr. Collyard off in his discussion. When he had
22 referenced the document and the language that it existed, I
23 was simply trying to clarify which version of the document
24 that is at issue. I understand that --

25 THE COURT: That's been clarified, correct?

MS. MOMOH: No, it has not. So that's what I was trying to do. I understand they had a proposed redacted version of this document, for the record, Plaintiff's Exhibit P-333, that was exchanged via e-mail, but I wasn't sure as to the document he'd be sharing with the witness today, if that was the redacted version.

THE COURT: Let's clarify that.

MS. MOMOH: Because with the binder that I currently have, Your Honor, it's still the unredacted. So I didn't want to presume what was going to be offered in court today.

THE COURT: Understood. Let's clarify that.

MR. COLLYARD: Yes. So the version that will pop up on the screen will have that redacted, that it --

THE COURT: What does that say?

MR. COLLYARD: Sorry.

THE COURT: We have an appellate court --

MR. COLLYARD: Gotcha.

THE COURT: -- that will likely look at this, or could?

MR. COLLYARD: Yes. Thank you, Your Honor. Thank you for doing that.

"SAR filed by" is blocked out, redacted. I believe -- Mr. Reif will correct me if I'm wrong -- the signature is still there.

1 MR. REIF: Yes.

2 MR. COLLYARD: But the "SAR file date" is gone
3 and -- "SAR file date" and "SAR filed by" are both gone.

4 MR. REIF: Correct.

5 MR. COLLYARD: That's blocked out. That's in the
6 system. When I show the exhibit -- if I show this page,
7 you'll see that's (indicating) blocked out, but you'll still
8 see this (indicating), is what will happen. That's the only
9 redaction, in my understanding.

10 MS. MOMOH: Understood.

11 THE COURT: And I appreciate this. I appreciate
12 you making the objection. I appreciate you addressing the
13 issue.

14 I don't want to have lots of sidebars over things
15 that you all can discuss outside of the presence of the jury
16 when we're not in court and we are not wasting the jurors'
17 time, to address whether there are issues that need to be
18 brought to my attention, because this is one that does
19 because it has been resolved.

20 Understood?

21 MR. COLLYARD: Understood by us, Your Honor.

22 MS. MOMOH: Yes, Your Honor.

23 **(In open court.)**

24 THE COURT: Counsel, you may proceed.

25 MR. COLLYARD: Thank you, Your Honor. Your Honor,

I offer Plaintiff's Exhibit 333.

MS. MOMOH: The objection is withdrawn,
Your Honor.

THE COURT: 333 is received.

BY MR. COLLYARD:

Q. Ms. Pesch, let's go to Plaintiff's Exhibit 333.

MS. MOMOH: Excuse me, Your Honor. If I may?
Well, for the reasons that we discussed at sidebar, the
objection is maintained. So, still, we continue to object
to this exhibit.

THE COURT: The objection is overruled.

MR. COLLYARD: Thank you, Your Honor.

THE COURT: You may proceed --

MS. MOMOH: Thank you, Your Honor.

THE COURT: -- as instructed.

MR. COLLYARD: Thank you, Your Honor.

BY MR. COLLYARD:

Q. Ms. Pesch, if you can -- let's go to the -- let's go to
page 2. If you can just please tell me what the purpose of
this document was.

A. This is a case.

Q. This is a case?

A. Yes.

Q. Okay. So we talked about Exhibit 189 before, right?

You told me that was a draft of your analysis that you did

1 when you went back and you looked at that activity from
2 January of 2008 through August of 2008, correct?

3 A. Yes.

4 Q. Now, this case, as you call it, in Exhibit 333, this is
5 the final version of that, right?

6 A. Yes.

7 Q. And you were questioning whether or not the numbers in
8 Exhibit 189 were accurate or not. Do you remember that?

9 A. It was just the general content of the case. It wasn't
10 in a final form, so, yes, I had trouble testifying to a
11 draft that I -- wasn't my final version.

12 Q. I understand. If we go to page 5, for example, and if
13 we pull up that chart on page 5. Now if we can go to
14 Exhibit 189 and pull up Exhibit 189, page 2, and put the
15 chart next to each other, we can see them.

16 And so, Ms. Pesch, what we have is on the left we
17 have Exhibit 333 and on the right we have Exhibit 189. And
18 they are the same exact numbers, correct?

19 A. It appears so, yes.

20 Q. Both of them are for \$2.869 billion, right?

21 A. Yes.

22 MS. MOMOH: I'm sorry, Your Honor. Just for
23 purposes of the record, I need to see the page numbers of
24 the documents that are being compared for both sides.

25 MR. COLLYARD: It's Exhibit -- I'll do that,

1 Your Honor. That's fine.

2 THE COURT: Thank you.

3 MR. COLLYARD: It's Exhibit 189, page 2, on the
4 left and Exhibit 333, page 5, on the right.

5 BY MR. COLLYARD:

6 Q. Now, if we go -- let's go back just for a second just to
7 give us some context. I'm going to look at some more of the
8 analysis that you did in this, but I'll just go back to some
9 of the descriptions on page 4 of Exhibit 333.

10 And if we go back up to Petters Group Worldwide,
11 look at your entry there -- it's the second paragraph,
12 yes -- it reads, (As read) "Petters Group Worldwide is a
13 recognized leader in creating, developing and investing in
14 companies that manufacture and market merchandise solutions
15 for growth markets." Do you see that?

16 A. Yes.

17 Q. And it says, "Petters Group is a privately held company
18 with ownership or investments in over 60 companies around
19 the world, actively managing 20." Do you see that?

20 A. Yes.

21 Q. And that's a description for Petters Group Worldwide,
22 right?

23 A. Yes.

24 Q. That is not describing Petters Company, Inc., is it?

25 A. No.

1 Q. Why, Ms. Pesch, are you talking about Petters Group
2 Worldwide in analysis on account activity for Petters
3 Company, Inc.?

4 A. It's part of the overall case. It helps understand the
5 context of the activity in this case.

6 Q. What does the activity of Petters Group Worldwide have
7 to do with Petters Company, Inc.?

8 A. It helps understand -- when we get into the discussion
9 of the fraud, it helps to put everything into context.

10 Q. Okay. The Petters Company, Inc. account was owned by
11 the Petters Company, Inc., right?

12 A. That's the business it was titled to.

13 Q. So when there -- when an account is titled to a
14 business, it's the business's account, correct?

15 A. Yes.

16 Q. It was not the Petters Group Worldwide account, right?

17 MS. MOMOH: Objection, Your Honor, lack of
18 foundation.

19 THE COURT: Overruled. You may answer if you can.

20 THE WITNESS: No, it wasn't.

21 BY MR. COLLYARD:

22 Q. And if we just go down to the fourth paragraph where it
23 reads, "Mr. Petters and business associates," we'll just pop
24 that up Just really quickly. And I'll go through this
25 pretty quickly, Ms. Pesch.

1 "Mr. Petters and business associates Deanna
2 Coleman, Bob White, Michael Catain, and Larry Reynolds were
3 arrested." Do you see that?

4 A. Yes.

5 Q. Do you understand that Michael Catain was affiliated
6 with Enchanted Family Buying Company?

7 A. Today I don't remember how he was involved.

8 Q. Well, if you look down below -- I'm sorry. Let's go to
9 page -- we're on page 4, so let's just look down below,
10 then, on your analysis. And you see those bullet points?

11 A. Yes.

12 Q. And it says, the fourth bullet point -- or the third
13 bullet point down, I'm sorry, it says, "Michael Catain, who
14 ran Enchanted Family Buying Company," right?

15 A. Yes.

16 Q. You understand that Michael Catain now was affiliated
17 with Enchanted Family Buying Company, right?

18 A. Yes.

19 Q. And he was arrested, right?

20 A. That's what it says, yes.

21 Q. And then the bullet below that reads, "Larry Reynolds of
22 Nationwide International Resources," right?

23 A. Yes.

24 Q. And your analysis says that Mr. Reynolds was arrested as
25 well, correct?

1 A. Yes.

2 Q. And if we just go back to the fifth paragraph, it reads,
3 "According." Let's pull that up. And this is similar to
4 what you said before.

5 You said, "The scheme entailed soliciting
6 investors to PCI by promising that their investments were
7 secured in property, principally retail goods." Do you
8 remember that?

9 A. Yes.

10 Q. And that didn't change from your other analysis,
11 correct?

12 A. Correct.

13 Q. And you say, "which were purchased at wholesale from
14 vendors such as Nationwide International Resources and
15 Enchanted Family Buying Company and sold to retailers such
16 as Walmart and Sam's for profit," right?

17 A. I said that in the context of the article I was citing,
18 yes.

19 Q. That was the same -- similar language to what you had
20 used in your draft earlier, right?

21 A. Yes.

22 Q. That didn't change, correct?

23 Then I'll just touch on one more. It's down below
24 where it starts, "If payments." If we pull that up, it
25 reads, "If payments were made by PCI to its lenders or

investors, it was with funds obtained from other victim lenders who were also fraudulently induced to fund the investment scheme." Do you see that?

A. Yes.

Q. That activity there that you're talking about there, is that indicative of a Ponzi scheme?

A. It sounds like it.

Q. Do you agree with me?

A. Yes.

Q. Okay. So let's take and just -- let's go to page 15 of this, and I want to talk about checks just real quickly.

And if we go to page 15, it's the fifth paragraph down where it reads, "Additional debits." It says, "Additional debits to the account consisted of numerous checks payable to Mr. Petters and related companies." Do you see that?

A. Yes.

Q. And there's a sentence there that reads, "There were several checks totaling." "There were several checks totaling \$233,709 payable to Bob White," right?

A. Yes.

Q. "And numerous checks payable or referencing Deanna Coleman," correct?

A. Yes.

Q. And you considered those checks in doing your analysis,

1 correct?

2 A. At the case level, which is more comprehensive, yes.

3 Q. But you considered those checks, right?

4 A. Yes.

5 Q. And, by the way, let's just jump to your conclusion. I
6 should have done that right away. If we go to page 15 --
7 we're still at page 15, but at the bottom of page 15, that
8 starts your conclusion, right?

9 A. Yes.

10 Q. And let's just go through that just real quickly. You
11 say -- let's pop up that. You say, "Based on the review,
12 transactions similar to those detailed in various articles
13 regarding the investment scam can be seen in Petters
14 Company, Inc.'s account during the review period," correct?

15 A. Yes.

16 Q. And what you are talking about when you say "the Petters
17 Company, Inc.'s account," you are talking about the
18 transaction activity in the account, right?

19 A. Yes.

20 Q. And you are talking about the money going in and the
21 money going out of the account, right?

22 A. I just generally say the transactions.

23 Q. Okay. Well, the next sentence you say, "The incoming
24 and outgoing wires and funds transferred through checks
25 between companies and individuals known to have been

1 involved in the fraud, such as Enchanted Family Buying
2 Company, Nationwide, Deanna Coleman, Bob White." Do you see
3 that?

4 A. Yes.

5 Q. And you are talking about your analysis that you did on
6 transactions pertaining to those companies and those
7 individuals, right?

8 A. Yes.

9 Q. And, again, that would have been the same exact
10 transaction activity during the time period of January 2008
11 to August of 2008 for other alerts that had alerted on the
12 Petters Company, Inc. account, true?

13 A. Yes.

14 Q. So if we -- I've got to get the rest of that just to
15 make it make sense. It reads, "and Metro Gem through its
16 connection to Frank Vennes as well as several of the
17 companies that have claimed to be victims of the investment
18 scam" -- going on to the next page -- "appear suspicious."
19 Do you see that?

20 A. Yes.

21 Q. And what your conclusion is is the transaction data that
22 you looked at appears to be suspicious?

23 A. Yes.

24 Q. Then it reads, "It also appears suspicious that the
25 Petters companies have business relationships at numerous

1 banks as it appears this may have been intended to layer and
2 conceal the nature of the transactions." Do you see that?

3 A. Yes.

4 Q. Do you remember earlier this morning when I was asking
5 you -- when we were talking about financial investments and
6 I was asking you if one of the things you would look at is
7 whether or not a company would wire money to another company
8 that it owns; do you remember that?

9 A. Yes.

10 Q. Could that be indicative of what you are calling
11 layering here?

12 A. It could be.

13 Q. Well, that's -- I'm sorry. Is that what you are
14 actually referring to, the fact that Petters Company, Inc.
15 was wiring money to other Petters businesses and you are
16 mentioning that that is indicative of layering?

17 A. Yes.

18 Q. And layering is a concept of money laundering, right?

19 A. Yes.

20 Q. And companies like that, they try -- or, I'm sorry,
21 fraudsters do that to try to hide their money, correct?

22 A. Yes.

23 Q. And they try to make it look legitimate by doing that;
24 is that also right?

25 A. Yes.

1 Q. And those are the types of things that the anti-money
2 laundering analysts in the Anti-Money Laundering Group are
3 actually looking for to determine whether that activity is
4 potentially suspicious; am I right about that?

5 A. Yes.

6 MS. MOMOH: Your Honor, if I may, I object to the
7 display of the information that's currently highlighted on
8 the screen on the basis of Title 31 of the Bank Secrecy Act.

9 THE COURT: Overruled.

10 BY MR. COLLYARD:

11 Q. Then the last part of this, Ms. Pesch, is: "This
12 activity merits the filing of a SAR." Do you see that?

13 A. Yes.

14 Q. And that was your conclusion, right?

15 MS. MOMOH: Objection, Your Honor, same objection.

16 THE COURT: Overruled.

17 THE WITNESS: That's what's written.

18 BY MR. COLLYARD:

19 Q. Was that your conclusion?

20 A. I wrote the conclusion.

21 Q. Okay. Let's -- I want to just touch on some of the
22 things that you looked at when you made your conclusion that
23 this merits the filing of a SAR.

24 Let's go to -- I want to look at, for example --
25 let's look at page 92, and it's going to be goofy. You are

1 going to have to turn your exhibit to be able to read it.

2 Let me see if I have this correct. Is page 92 a graph that
3 you did reflecting the incoming wires from the time period
4 of September of 2007 up through August of 2008 on the
5 Petters Company, Inc. account?

6 A. It's a graph that shows the incoming wires from
7 September 2007 to August 2008.

8 Q. So, for example, in October of 2007 it shows incoming
9 wires somewhere around \$800-plus million, right?

10 A. Yes.

11 Q. And the purpose of this graph is to do what?

12 A. Display transaction activity.

13 Q. So if you see down below, it's really close to the
14 bottom of the graph, there's this line that kind of goes
15 across. Do you see that?

16 A. Yes.

17 Q. And there's some writing there. It's hard to read, but
18 it says, "Peer average." Do you see that?

19 A. I see that there's writing there. I can't read what it
20 says.

21 Q. Well, Ms. Pesch, you know that what you are doing here
22 is you are taking the incoming wires and you are comparing
23 them to the peer average, correct?

24 A. I don't see that titled on this graph.

25 Q. Are you familiar with what this graph was when you

1 created it?

2 A. I didn't create this.

3 Q. Were you familiar with it when you used it in your
4 analysis?

5 A. I would have been then, yes.

6 Q. Okay. Do you understand what "peer average" means?

7 A. I remember that that was a category in Searchspace. I
8 couldn't probably completely define it today.

9 Q. Well, if we step back to Searchspace, do you understand
10 that how Searchspace worked was it would take incoming and
11 outgoing wires, for example, and it would compare them to
12 the peer average to get information to determine whether or
13 not those wires were indicative of unusual activity? Do you
14 have that understanding?

15 A. Searchspace didn't show us or tell us that something was
16 suspicious. It just alerted activity that should be looked
17 at.

18 Q. And I'm more -- I'm actually kind of behind the scenes
19 inside of Searchspace. Searchspace uses an algorithm,
20 right?

21 A. I believe so.

22 Q. And what Searchspace did is it took the incoming and
23 outgoing wires and it compared them to averages at the peer
24 level to determine whether there was an event, right?

25 A. I don't know if I remember enough to be able to answer

1 that today.

2 Q. You do know what an event is?

3 A. Yes.

4 Q. And the way that scores were created, for example, in
5 Searchspace was comparing the incoming and outgoing wires to
6 a peer average to create an event and whether the events
7 added up to a certain amount, that would create a score,
8 right?

9 A. I remember that scores were created for events. I don't
10 remember all of the things that went into creating it or
11 generating it.

12 Q. And you can't tell by looking at your -- the document
13 that you used in your analysis if what you are trying to do
14 here, for example, in October of 2007 is compare the
15 incoming wires, which were more than \$800 million, to what
16 the peer average would be for other potential customers that
17 fell into that peer group?

18 A. When I was working this case, I would have been familiar
19 with this graph. Today I don't remember and I can't -- most
20 of those words are covered. I can't read it.

21 Q. Does that sound like a reasonable explanation to you?

22 MS. MOMOH: Objection, Your Honor, argumentative.

23 THE COURT: Sustained.

24 BY MR. COLLYARD:

25 Q. So you can't tell by looking at this graph whether what

1 you are doing is comparing it to the peer averages of other
2 customers? Do I understand your testimony correctly?

3 A. When we were looking at activity -- or graphs from
4 Searchspace, I remember them being titled and I don't see a
5 title on this graph.

6 Q. Okay. Well, I've got another document that I can show
7 you. I'll do that. I'll do that now -- in a little bit.
8 Hold off and I'll show you that.

9 But did you use this graph in doing your analysis,
10 for example, of how you determined that the activity or the
11 transaction activity was potentially suspicious or what --

12 A. Yes.

13 Q. Yes. Okay.

14 Now, if we go to page 100 --

15 THE COURT: Counsel, would you identify the
16 exhibit number again?

17 MR. COLLYARD: Sorry, Your Honor. It's
18 Exhibit 333, page 100.

19 THE COURT: Thank you.

20 BY MR. COLLYARD:

21 Q. And what we have here, Ms. Pesch, are copies of checks
22 written on the account, right?

23 A. Yes.

24 Q. And if we focus on the check on the bottom there, that's
25 a check that Deanna Munson wrote to herself for \$25,000,

1 right?

2 A. Yes.

3 Q. And do you see it says something about "Repayment for
4 Tom - cash"; do you see that?

5 A. Yes.

6 Q. And that would be an indication that it's for cash; is
7 that right?

8 A. Not necessarily.

9 Q. Fair enough. It's for repayment for cash for Tom
10 Petters?

11 A. I can only read what it says. It -- this was a check
12 and not cash.

13 Q. This was a check that you analyzed and you looked at
14 when you did your review and analysis to determine that the
15 activity was suspicious, correct?

16 A. Yes.

17 Q. And this check is for 25 grand, right?

18 A. Yes.

19 Q. Now, let's talk about round numbers for a second. This
20 check is for \$25,000. Is that a round number?

21 A. Yes.

22 Q. And round numbers, you understand -- or let me back up.
23 Do I have it correctly that the Anti-Money Laundering Group
24 looks at round numbers to -- as one of the factors that
25 could go into the analysis as to whether or not activity is

1 potentially suspicious?

2 A. Yes.

3 Q. And certainly \$2.5 million is a round number, right?

4 A. Yes.

5 Q. And \$1 million is a round number; is that right?

6 A. Yes.

7 Q. So you considered this check for 25,000 and these other
8 checks that are listed in this document in making your
9 determination that the activity was actually suspicious,
10 correct?

11 A. Based on the new information from the articles, yes.

12 Q. So let me show you -- I'll just show you a couple more.
13 If we go to page 120 of Exhibit 333, this time we're going
14 to go to the upper left-hand corner.

15 A. Did you say 120?

16 Q. Yes, page 120 of Exhibit 333. And this is a check that
17 Deanna Coleman wrote to Deanna Coleman for \$10,000, right?

18 A. Yes.

19 Q. Yet another round number; is that right?

20 A. Yes.

21 Q. And this is one of the checks that you determined -- or
22 that you used to determine that the activity appeared
23 suspicious, correct?

24 A. Based on the new information in the articles, yes.

25 Q. If we go to -- go to page 207. And, by the way,

Pesch -- Cross

1 Ms. Pesch -- I'm sorry. Go ahead.

2 A. Thank you.

3 Q. The checks that we just looked at, for example, those
4 checks would have been available for the anti-money
5 laundering analysts to look at during the time period when
6 those alerts had alerted for that particular activity,
7 right?

8 A. If they were from the time frame reviewed in those
9 alerts, yes.

10 Q. So the very checks that you looked at, the analysts who
11 reviewed and closed those alerts during that time period
12 could have also looked at those same checks, correct?

13 A. Yes.

14 Q. Now, I asked you about this particular page, I think,
15 yesterday. So I'm on page 207 in Exhibit 333. And this is
16 a wire -- an incoming wire from Nationwide, right?

17 A. Yes.

18 Q. I want to focus on a few of these Nationwide wires and
19 ask you a few questions about them.

20 You see this one was for \$4,407,800; do you see
21 that?

22 A. Yes.

23 Q. So the \$800 portion of that, that's a round number,
24 right?

25 A. You could make an argument it could be.

1 Q. Let me go to the next page, and I want -- and when I'm
2 asking about Nationwide and Enchanted, I want to focus on
3 the ending of the numbers to see if you see a pattern.

4 You see on page 208 of Exhibit 333, there's
5 another wire, incoming wire, from Nationwide, right?

6 A. Yes.

7 Q. And up above we see the wire amount and this time it's
8 for \$3,338,300, right?

9 A. Yes.

10 Q. So you've got -- before you had \$800, now you have \$300,
11 right?

12 A. Yes.

13 Q. No cents, correct?

14 A. Correct.

15 Q. Let's go to the next page, page 209 of Exhibit 333. You
16 have another incoming wire from Nationwide, correct?

17 A. Yes.

18 Q. And if we look at the amount, it's \$2,423,800, right?

19 A. Yes.

20 Q. So we've had 800, 300, 800, right?

21 A. Yes.

22 Q. All no cents, correct?

23 A. Correct.

24 Q. I'll just do a couple more. Page 210 in Exhibit 333,
25 you've got another incoming wire from Nationwide, right?

1 A. Yes.

2 Q. And that one was for \$1,874,000 even, right?

3 MS. MOMOH: Objection, Your Honor, 403,
4 cumulative.

5 THE COURT: Overruled.

6 THE WITNESS: Could you repeat your question?

7 BY MR. COLLYARD:

8 Q. Yes. That wire is for \$1,874,000 even, correct?

9 A. Yes.

10 Q. Again, no cents at all, right?

11 A. Correct.

12 Q. All round numbers?

13 A. This one I would say is more clearly a round number, but
14 you could make an argument that the rest of them were.

15 Q. Do you agree with me, Ms. Pesch, that what I just showed
16 you on these Nationwide wires, how they all end in hundred
17 dollar round figures, is -- could be a pattern that would
18 be -- that could be one of the factors that you would
19 consider in determining whether or not activity is
20 potentially suspicious?

21 A. Yes.

22 Q. And these wires in particular from Nationwide were wires
23 that you considered when you determined that the activity
24 did appear to be suspicious, correct?

25 A. Could you repeat that one more time? Sorry.

1 Q. Yes. These wires from Nationwide, these were wires that
2 you actually looked at in making your analysis, in making
3 your determination that that activity from two thousand
4 and -- during 2008 did appear to be suspicious?

5 A. Yes.

6 Q. Give me one second. I have one more to show you.

7 This one is going to test our vision. Let's go to
8 page 21, and this is going to be another one of those,
9 Ms. Pesch, where you are going to have to turn your book
10 because of the way it lays out.

11 Now, this page 21, Ms. Pesch, is how it was
12 provided to us in the case, so I can't do anything about the
13 clarity of this. Okay? So we're going to have to do our
14 best.

15 A. Okay.

16 Q. Looking at this document, you know what this is, right?

17 A. Yes.

18 Q. And if -- I'm going to do our best so I can see it so I
19 can talk about it. What I'm going to do is I'm going to
20 have the Petters -- you see a box in the middle that says,
21 "Petters Company, Inc." account, right?

22 A. Yes.

23 Q. So I'm going to have the Petters Company, Inc.
24 account -- we're going to have to make it smaller so we can
25 see it, and then if we can talk about the stuff on the

1 right, the information on the right, if there's a way to
2 show that. We're going to do our best here.

3 And what you are doing here, Ms. Pesch, is you're
4 identifying the relationship and flow of suspicious funds,
5 right?

6 A. Yes.

7 Q. And you are actually mapping out and drawing out the
8 flow of funds, correct?

9 A. Yes.

10 Q. And you're looking at the money going in and the money
11 going out for these particular people or entities, right?

12 A. Yes.

13 Q. Now, let's just pause here for one second. I'm going to
14 try to help us out here. Can you go to Exhibit -- we're
15 going to try to keep this, but we're going to go to
16 Exhibit 411. Do you see it, Ms. Pesch?

17 A. Exhibit 411?

18 Q. Yes.

19 A. Yes.

20 Q. And this is, again, relationships and flow of suspicious
21 funds diagram for the Petters Company, Inc. account, right?

22 A. Yes.

23 Q. But this one we can actually read, can't we?

24 A. I can.

25 Q. I can too.

Pesch -- Cross

1 A. Okay.

2 Q. If we look at it, does it appear to you, Ms. Pesch --
3 I'm sorry. Ms. Pesch, is this a diagram that you drafted?

4 A. Yes.

5 MR. COLLYARD: I offer Plaintiff's Exhibit 411.

6 MS. MOMOH: No objection, Your Honor.

7 THE COURT: Exhibit 411 is received.

8 BY MR. COLLYARD:

9 Q. I'm going to try to save our hard work on that one, but
10 I'm going to pop up 411 and then come back to this one.

11 So now we have -- if we could make 411 a little
12 bit -- there we go -- a little bit bigger in the middle and
13 to the right, now we can see what we were trying to look at
14 in Exhibit 21, correct?

15 A. I believe so, yes.

16 Q. Yes. And this is the flow of funds diagram that you
17 drafted, correct?

18 A. Yes.

19 Q. And on the right you have "Involved in Fraud"; is that
20 true?

21 A. Yes.

22 Q. And then below that you list "Tom Petters," "Deanna
23 Munson," "Bob White." Do you see that?

24 A. Yes.

25 Q. And then you list "Larry Reynolds NIR, Inc." Do you see

1 that?

2 A. Yes.

3 Q. And that's Nationwide International Resources again,
4 right?

5 A. Yes.

6 Q. And you described them as "sold fake merchandise to
7 PCI," correct?

8 A. Yes.

9 Q. And then down below that you have "Michael Catain
10 Enchanted FB." Do you see that?

11 A. Yes.

12 Q. And that means Enchanted Family Buying Company; do you
13 agree with me?

14 A. Yes.

15 Q. And then you describe that as "sold fake merchandise to
16 PCI," right?

17 A. Yes.

18 Q. Okay. Now what you are doing in your analysis is you
19 are looking to see the money that was being wired in from
20 them and to see if any money was going to them, right?

21 A. Yes.

22 Q. Now that we know that, let's bring over the one on the
23 left. Let's see if we can see that to match it up and do
24 our best to read what you have written there.

25 And what you did, Ms. Pesch -- tell me if this is

1 true -- is you took those numbers, for example, from
2 Exhibit 333, the numbers that we were talking about earlier,
3 for example, which was on page 6 for Enchanted Family Buying
4 Company, and then you put that number into this flow of
5 funds, correct?

6 A. Just a minute. Let me find page 6.

7 (Pause)

8 A. So this flowchart is potentially any money flowing back
9 and forth, not exclusive to wires.

10 Q. Do you see the total for Enchanted Family Buying Company
11 on page 6? It's \$307 million. Do you see that?

12 A. I can't read the value.

13 Q. I'm sorry.

14 A. Sorry.

15 Q. On page 6, do you see your chart --

16 A. Oh.

17 Q. -- that says \$307 million?

18 A. Yes.

19 Q. Then if we go to Enchanted on your graph there, where
20 you have the arrow pointed towards the Petters Company,
21 Inc., do you see that it says \$307 million?

22 A. I can't read it exactly, but it looks like it could
23 possibly say that number, yes.

24 Q. And then the money going into -- the money going to
25 Enchanted, do you see that, on your flowchart in

Exhibit 333?

A. I can't read it.

Q. Does it look like zero?

A. On the screen it looks more like zero than in my copy, so yes.

Q. Do you agree with me that you are saying that \$307 million was being wired in from Enchanted and zero money was going to Enchanted, is what you are trying to articulate, right?

A. It looks like that's what I had written on this flowchart.

Q. And then if you stay on Exhibit 6, I'll give you the number -- or, I'm sorry Exhibit 333, page 6 and 7 for your numbers on Nationwide. And your number for Nationwide is \$282 million. Do you see that?

A. Yes.

Q. Now, if you look up for Nationwide right above it, you do the same thing, right, where you try to fill in the money; is that right?

A. To show the flow of funds, yes.

Q. And so you've got the money going into the account from Nationwide. Do you see that?

A. Yes.

Q. And you've got 282, right?

A. It looks like it.

1 Q. But you say billion, right?

2 A. It looks like it.

3 Q. Is that a -- you said billion on your chart, but it's
4 really 282 million on the math, right?

5 A. Yes.

6 Q. So what you have -- what you have written there is
7 \$282 billion going into the account and you have zero
8 dollars going to Nationwide; is that accurate?

9 A. That's what's written on here.

10 Q. And this, Ms. Pesch, is a type of flow of fund analysis
11 that you drafted, correct?

12 A. Yes.

13 THE COURT: Counsel, let's clarify what exhibit
14 you're referring to when you say "this."

15 MR. COLLYARD: Yes. Sorry, Your Honor.

16 BY MR. COLLYARD:

17 Q. So for both Exhibit 333, page 21, which is on your left,
18 and Exhibit 411, which is appearing on the screen to your
19 right, both of those are flow of funds diagrams that you
20 drafted to understand the transaction activity going in and
21 out of the account, correct?

22 A. They are both versions of that flow of funds diagram,
23 yes.

24 Q. Okay. Now I want to just ask you quickly -- I told you
25 I'd talk about events. I just want to ask you about events

1 real quickly. If we can go to Exhibit 182 while I grab
2 mine.

3 (Pause)

4 Q. Ms. Pesch, I'm sorry. I forgot to ask you something
5 about the flow of funds charts that you drafted. Those flow
6 of funds charts that you drafted were helpful for you to
7 understand the transaction activity, correct?

8 A. Yes.

9 Q. Okay. Now let's go to Exhibit 182 and let's go to --

10 MR. COLLYARD: Exhibit 182 is already in evidence,
11 Your Honor.

12 BY MR. COLLYARD:

13 Q. Let's go to page 24 of Exhibit 182 and tell me,
14 Ms. Pesch, if you remember these being the alerts on the
15 Petters Company, Inc. account.

16 A. I don't remember it, but I can read that Petters
17 Company, Inc. is the customer identified.

18 Q. This is a reflection of the alert, for example on
19 Alert 60827, correct?

20 A. Yes.

21 Q. Now, I was asking you about events and I was talking
22 about Searchspace and the algorithm and getting to a score,
23 right?

24 A. Yes.

25 Q. So I want to just do that for a few of these so we can

see what that means and understand what the score means.

Okay?

A. Okay.

Q. So what we've got here -- let's just do it from the beginning. We've got 60827, which is the month of two thousand -- I'm sorry, the month of November for 2005, correct?

A. Yes.

Q. And it says the alert was assigned to you, right?

A. Yes.

Q. And then on the left-hand side it gives a score of 237. Do you see that?

A. Yes.

Q. And what we have below here for alert events is the making of the score, correct?

A. It appears it could be cumulative to add up to the score.

Q. That's -- this is how the scores are made, correct?

A. I don't remember, but it look like it contributed to the score.

Q. So if we take a look at the very top one, down under Alert Events, it says, "Incoming Wire Deposit," right?

A. Yes.

Q. So this tells us that the incoming wires were for \$606.4 million, right?

1 A. Yes.

2 Q. And then if you look to the right of it, it says,
3 "Average Value or Volume." Do you see that?

4 A. Yes.

5 Q. And what do you understand that to be?

6 A. I don't remember what I -- I don't remember.

7 Q. Well, if you look to the left, it says, "Peer Monthly
8 Value Event," right?

9 A. Uh-huh, yes.

10 Q. And you have a general understanding as to what "peer"
11 means, right?

12 A. Yes.

13 Q. And what does that mean?

14 A. Similar type businesses or similar businesses.

15 Q. A similar type business is what you are saying, right?

16 A. Similar business, yes.

17 Q. And if you go to the average, then, what this is doing
18 is it's looking at the \$606 million coming in and it's
19 comparing it to the average of what a similarly-situated
20 customer would be in the business banking group, right?

21 A. I don't remember.

22 Q. Does that appear to be what is happening here?

23 A. It doesn't clarify whose average, so I can't say for
24 sure because I don't remember.

25 Q. Does it make sense to you that that's the peer average?

1 A. I don't see it identified there. It just says
2 "average."

3 Q. What other average could it be?

4 A. The customer's average? I'm not sure. I don't remember
5 and it's not identified.

6 Q. Does it appear to you, Ms. Pesch, that what is happening
7 here for these events is it's taking the incoming wire,
8 comparing it to the average of the peer, which would be
9 606 million compared to 5.8 million, and then comparing that
10 to a threshold? Do you see that?

11 A. I see "Threshold," yes.

12 Q. And this indicates that in this particular instance for
13 this particular wire, it was half a billion dollars more
14 than the threshold, right?

15 A. Can you repeat that?

16 Q. In this particular instance for the incoming wires for
17 this month of November of 2005, the \$606 million being wired
18 in was over a half a billion dollars more than the
19 threshold, correct?

20 A. I really don't remember how these events were created or
21 scored.

22 Q. Do you have any reason to disagree with my analysis?

23 MS. MOMOH: Objection, Your Honor, calls for
24 speculation.

25 THE COURT: Overruled. You may answer if you can.

1 THE WITNESS: I really don't remember about the
2 events.

3 BY MR. COLLYARD:

4 Q. Well, then if you look to the right, it gives a score of
5 70, right?

6 A. Yes.

7 Q. And then if you add up the scores on the right, that
8 equals 237, correct?

9 A. I'm not very good at doing math on the spot --

10 Q. Neither am I.

11 A. -- but it's possible.

12 Q. That's perfectly okay. Do you have any reason to
13 disagree with me that if you add up those numbers it's 237?

14 A. I suspect that if you add them up, you'll get the score.

15 Q. And then if you look -- and by the way -- let's step
16 back. When you were an anti-money laundering analyst, you
17 had access to this information, didn't you?

18 A. Yes.

19 Q. And if we just go to the one below it, it does it again
20 for the outgoing wires, right?

21 A. Yes.

22 Q. And, again, that indicates to us that there was
23 \$606 million in incoming wires and 600 million in outgoing
24 wires, right?

25 A. Yes.

1 Q. Very similar numbers again, correct?

2 A. Yes.

3 Q. And then this compares it to the threshold, and this
4 time the outgoing wires are \$415 million more than the
5 threshold, right?

6 A. It looks like it might say that.

7 Q. And then it gave it the score of 69, correct?

8 A. Yes.

9 Q. Now, if we just do the next two below it, just to make
10 sure that this all makes sense, it says, "Incoming Wire
11 Deposit." Do you see that?

12 A. Yes.

13 Q. And now is what it's doing is taking the number of wires
14 and doing an analysis on the number of wires?

15 A. Yes.

16 Q. And down below that it does the same thing for the
17 number of outgoing wires, right?

18 A. Yes.

19 Q. And it gives us scores, correct?

20 A. Yes.

21 Q. Remember when we were talking about -- in 60827 and
22 64556 we had the little block that said reported or alerted
23 for value and volume of incoming and outgoing wire. Do you
24 see that -- do you remember that?

25 A. Can you repeat that, please?

1 Q. Yes. When we were talking about your comments in
2 Searchspace where you had listed that the alert had reported
3 or alerted for value and volume of both incoming and
4 outgoing wires --

5 A. Yes.

6 Q. -- correct?

7 MS. MOMOH: For the record, objection, Your Honor.
8 If counsel is referring to a document, I ask that he show
9 her the document that he's referring to in his question.

10 THE COURT: I believe we have a response that
11 said, "Yes." Is that correct?

12 MR. COLLYARD: Yes, Your Honor.

13 THE COURT: Okay. You may proceed with your
14 question.

15 BY MR. COLLYARD:

16 Q. And, Ms. Pesch --

17 THE COURT: And the objection is overruled.

18 MR. COLLYARD: Sorry, Your Honor.

19 BY MR. COLLYARD:

20 Q. And, Ms. Pesch, what this is doing here in this, what we
21 see on page 24 of Exhibit 182 -- when I say "this," that's
22 what I mean -- the scores that are being created in these
23 events, what that is doing is it's showing us that this
24 particular alert for a score of 237 is alerting for both
25 value, meaning the amount, and volume, meaning the number,

1 of incoming and outgoing wires, correct?

2 A. Yes.

3 Q. And when you were doing your comments in Searchspace, if
4 you wanted to, you could have gone and looked at
5 Exhibit 182, page 24, and seen this exact information,
6 correct?

7 A. Yes.

8 MR. COLLYARD: Your Honor, are we close to our
9 break where I --

10 THE COURT: We are.

11 MR. COLLYARD: -- could try to clean some things
12 up?

13 THE COURT: Pardon me?

14 MR. COLLYARD: Where I could try to clean some
15 things up to move things along.

16 THE COURT: We will break at 3:00.

17 BY MR. COLLYARD:

18 Q. Let's go back to Exhibit 183 and go back to Alert --
19 let's do -- I'm sorry. Let's go to Alert 64556.

20 A. Could you provide the page number?

21 Q. Yes. I'm just trying to find it myself. It's
22 Exhibit 183 at page 37. Let's just focus on that first page
23 there, go down to that bottom block. I'll blow that up.

24 You say, "Petters Company, Inc. is a collection of
25 nearly 20 companies that make and market a variety of

1 consumer products worldwide." Do you see that?

2 A. Yes.

3 Q. Now, that sounds very similar to the description that
4 you gave about Petters Group Worldwide in Exhibit 333,
5 correct?

6 MS. MOMOH: Objection, Your Honor. As I stated
7 before, if counsel is referring to a document when asking
8 questions of Ms. Pesch, I ask that he show her the document.

9 THE COURT: Ms. Pesch, do you know from
10 recollection?

11 THE WITNESS: I would like to double-check against
12 the document.

13 MR. COLLYARD: I will be glad to show Ms. Pesch
14 the exhibit.

15 THE COURT: You may.

16 BY MR. COLLYARD:

17 Q. If we go back to --

18 MR. COLLYARD: I'm trying to ask my questions and
19 be mindful of the break too, Your Honor.

20 (Pause)

21 THE COURT: We'll take our midafternoon break now.

22 Members of the Jury, please be prepared to return
23 to the courtroom at 3:15.

24 And please remember and abide by the instructions
25 that I have given you before to not discuss the case. You

1 know a little bit more about the case each time I ask you
2 not to. And don't do any kind of research or anything like
3 that, and also don't allow anyone to discuss the case with
4 you or near you.

5 So I hope you have a good break, and we'll be
6 ready to return at 3:15. Thank you.

7 (Jury excused)

8 **IN OPEN COURT**

9 **(JURY NOT PRESENT)**

10 THE COURT: We will be in recess. You certainly
11 may leave the witness stand. Because you are on the witness
12 stand and continuing to testify, you are not to discuss your
13 testimony with anyone during this break. Okay? Thank you.

14 MS. MOMOH: Your Honor, if I may? Mr. Collyard,
15 do you mind?

16 MR. COLLYARD: I don't mind.

17 MS. MOMOH: Thank you, Your Honor. During the
18 prior sidebar you had given counsel permission to speak with
19 Ms. Pesch pursuant to the instructions. We didn't have a
20 chance to caucus with her given the quickness of the recess.
21 Do you mind if we do that now briefly?

22 THE COURT: You may do so within the bounds of the
23 discussion that we had at sidebar.

24 MS. MOMOH: Absolutely. Should we do it here,
25 Your Honor, or does it matter where we --

1 THE COURT: The jury is not here. I don't want
2 the jury to overhear your conversation. Where you have it
3 is your decision.

4 MS. MOMOH: Thank you, Your Honor.

5 THE COURT: Everyone is free to leave the
6 courtroom.

7 MS. MOMOH: Understood. Thank you, Your Honor.

8 THE COURT: You're welcome.

9 (Recess taken at 3:02 p.m.)

10 * * * * *

11 (3:18 p.m.)

12 **IN OPEN COURT**

13 **(JURY PRESENT)**

14 THE COURT: Please be seated. Thank you.

15 You may proceed.

16 MR. COLLYARD: Thank you, Your Honor.

17 BY MR. COLLYARD:

18 Q. Ms. Pesch, let's go to Exhibit 183 and go to page 38,
19 this is the alert for 64556. And if we just go to the -- go
20 back to the incoming wires, down towards the middle of the
21 page where it says, "Most wires" and above it with the
22 \$1.463 billion.

23 MR. COLLYARD: Can we pop up a little bit to
24 get -- to show the incoming wires totaling?

25 BY MR. COLLYARD:

1 Q. I just want to make sure you have this, Ms. Pesch, so
2 you can see it.

3 You say, "There were 443 incoming wires totaling
4 \$1.463 billion," right?

5 A. Sorry. Just a minute. I'm trying to -- okay. Yes.

6 Q. You can't tell by looking at your comments why the
7 \$1.463 billion was being wired into the Petters Company,
8 Inc. account, can you?

9 A. No.

10 MR. COLLYARD: I have no further questions,
11 Your Honor.

12 THE COURT: Anything further for this witness?

13 (Pause)

14 THE COURT: May the witness be excused?

15 MS. MOMOH: Your Honor, Defendant BMO Harris Bank
16 would like to examine Ms. Pesch. If I could just have a
17 minute, please?

18 THE COURT: You may.

19 MS. MOMOH: And before we begin, Ms. Pesch, if you
20 can bring the documents that you were looking at previously
21 from the plaintiff's counsel, you might want to keep those
22 handy.

23 THE WITNESS: Oh.

24 MS. MOMOH: Your Honor, permission to approach the
25 bench?

1 THE COURT: You may.

2 (Document handed to the Court)

3 THE COURT: Thank you.

4 MS. MOMOH: You're welcome.

5 I have one for your law clerk if you'd like.

6 THE COURT: That's wonderful. Thank you.

7 MS. MOMOH: You're welcome.

8 (Pause)

9 THE COURT: I will just remind all counsel that
10 exhibits are not to be published until they are admitted.

11 MS. MOMOH: Thank you, Your Honor.

12 (Pause)

13 MS. MOMOH: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 BY MS. MOMOH:

16 Q. Good afternoon, Ms. Pesch.

17 A. Good afternoon.

18 Q. My name is Adine Momoh. I am counsel on behalf of
19 Defendant BMO Harris Bank. It's nice to see you again.

20 A. You too.

21 Q. Now, before we begin, I just want to follow up on some
22 questions that counsel for the plaintiff, Mr. Collyard, had
23 asked you before our break at a point.

24 To set the stage a little bit, describe for the
25 jurors what sort of information would be available to you as

an analyst through Searchspace during the 2005 to 2008 period if you were looking at checks.

A. It would give you the date and the value and that the transaction type was a check.

Q. Okay. And now describe for the jurors what sort of information would be available to you during that same period of time, 2005 to 2008, if you were reviewing wires.

A. It would show you the transaction date and the transaction amount, and there were fields for the originator and beneficiary, names.

Q. With respect to checks, who would be the parties to a check that you could see in Searchspace during that same period of time?

A. You would -- the only party you would know from Searchspace for a check is in relation to the account you were looking at. So if there were checks drawn on the account, you would have known who was writing the check and -- that's all you would know from Searchspace.

Q. With respect to wires, who would be the parties to a wire that you could see in Searchspace?

A. The name of the originator and the beneficiary.

Q. And when you say "originator," what do you mean?

A. The party that the wire was sent from.

Q. What would be an example of an originator?

A. Like if I were to send a wire to you, I would be the

1 originator.

2 Q. Okay. And you used the term "beneficiary." What do you
3 mean by that?

4 A. The party that received the wire.

5 Q. Okay. So, in your example, whoever had received the
6 funds would be the beneficiary?

7 A. Yes.

8 Q. Would you, as an analyst, during the 2005 to 2008 period
9 with respect to funds that were received by a beneficiary,
10 would you have been able to see how that beneficiary used
11 those funds?

12 A. Sorry. Could you repeat that one more time?

13 Q. Sure. So you testified that you were an analyst during
14 the period of 2005 to 2008, correct?

15 A. Yes.

16 Q. My question is with respect to Searchspace still. Okay?
17 So in Searchspace, with respect to funds that would have
18 been received by a beneficiary, would you be able to see how
19 the beneficiary used those funds in Searchspace?

20 A. If a client received funds, you could see debits to the
21 account.

22 Q. Is there anything else you could see?

23 A. I guess, like, with the wire example, you would see the
24 name of the beneficiary.

25 Q. And nothing else?

Pesch Direct

1 A. Right.

2 Q. Ms. Pesch, when did you learn that Tom Petters and his
3 entities, including PCI, were involved in the PCI Ponzi
4 scheme?

5 A. September 29th [indiscernible].

6 THE COURT REPORTER: I'm sorry. What was the
7 year?

8 THE WITNESS: 2008.

9 THE COURT REPORTER: Thank you.

10 BY MS. MOMOH:

11 Q. Besides the Ponzi scheme being discovered at that time,
12 does this period stick out to you for any other reason?

13 A. Yes.

14 Q. Why do you say that?

15 A. I was married in September of 2008.

16 Q. Explain to the jurors -- you just mentioned that you
17 were married in September of 2008, and you said at that
18 period of time is also when you had learned about the PCI
19 Ponzi scheme. Explain to the jurors the significance of
20 that time period to you.

21 A. I -- after I was married, I went on my honeymoon; and
22 when I returned, that's when I found out about the Ponzi
23 scheme.

24 Q. When you returned where?

25 A. Returned to work.

1 Q. How did you find out about the Ponzi scheme?

2 A. When I walked to my desk, there was a large folder on
3 the desk and I had an e-mail.

4 Q. So that was probably not the honeymoon gift that you
5 were expecting, right?

6 A. No.

7 Q. You just mentioned that there was a large packet of
8 documents that were on your desk, correct?

9 A. Yes.

10 Q. And, again, this was in that late September -- you said
11 September 29th, 2008?

12 A. Yes.

13 Q. Now, we'll return to this moment that you are describing
14 about this large packet of documents that you received later
15 today, but before we -- or later, at some point, but before
16 we do that, generally describe what was in that large packet
17 of documents.

18 A. It was some articles that were printed out and some
19 printouts from CIS.

20 Q. You say "some articles." What articles are you
21 referring to?

22 A. Articles that detailed the FBI raid and the fraud.

23 Q. Would those articles detailing the FBI raid on PCI have
24 been made available to you before September 29th of 2008?

25 A. No.

1 Q. Are you aware now, today, that eventually Tom Petters,
2 Deanna Coleman, and a number of other people went to jail
3 for their role in the PCI Ponzi scheme?

4 A. Yes.

5 Q. Do you know now that PCI pled guilty to its role in the
6 PCI Ponzi scheme?

7 A. Yes.

8 Q. Were you interviewed by law enforcement with respect to
9 the PCI Ponzi scheme?

10 A. No.

11 Q. Did you know that there was a Ponzi scheme happening by
12 PCI before it was discovered by the authorities in 2008?

13 A. No.

14 Q. Now, you now know that the defendant, BMO, is being
15 accused as somehow being involved in the PCI Ponzi scheme
16 and your work at M&I during that 2005 to 2008 period is now
17 being called into question. How does that make you feel?

18 MR. COLLYARD: Objection, Your Honor.

19 THE COURT: Sustained. Irrelevant.

20 BY MS. MOMOH:

21 Q. Well, when you learned that your work was now being
22 called into question, how did you respond to that?

23 A. I was hurt.

24 Q. Why do you say that?

25 A. Because the work we were doing was to try to prevent

1 something or to catch something like that.

2 MR. COLLYARD: Objection, Your Honor, relevance.

3 THE COURT: Sustained.

4 BY MS. MOMOH:

5 Q. Ms. Pesch, do you need a moment?

6 A. Yes.

7 Q. Okay.

8 (Pause)

9 A. Okay.

10 Q. Okay. Now, I know this is challenging and difficult for
11 you, but let's shift and talk about the period of time
12 before these events in question really took place.

13 The last time that Mr. Collyard had deposed you
14 was in January of 2018, correct?

15 A. Yes.

16 Q. And at that time you were living in Wisconsin, correct?

17 A. Yes.

18 Q. Do you still live in Wisconsin?

19 A. Yes.

20 Q. What city?

21 A. Muskego.

22 Q. Are you from Wisconsin?

23 A. No.

24 Q. Where are you from?

25 A. I grew up in the Twin Cities.

Q. Where in the Twin Cities did you grow up?

A. Chanhassen.

Q. Where did you go to high school?

A. Benilde-St. Margaret's in St. Louis Park.

Q. Now, I noticed that plaintiff's counsel showed you some documents during the relevant period of 2005 to 2008 and your name was identified as Drewiske. Is Drewiske your maiden name?

A. Yes.

Q. Do you and your husband have children?

A. Yes.

Q. How many?

A. Three.

Q. What are their ages?

A. Twin 11-year-olds and a 4-year-old.

Q. So you have your hands full, huh?

A. Yes.

Q. Tell us about your post high school education. Where did you graduate from college?

A. Marquette University in Milwaukee, Wisconsin.

Q. What degrees did you receive?

A. I doubled majored in business economics and finance.

Q. When did you graduate from college?

A. December 2005.

Q. My understanding is that your first experience in the

Resch Direct
1 banking industry was with M&I starting in January of 2005.

2 What sort of employment experiences did you have before
3 entering the banking industry?

4 A. I did a lot of babysitting and nannying. I worked at
5 the Chanhassen Dinner Theatre as a host. At Byerlys
6 restaurant in Chanhassen as a waitress and a host. I had a
7 summer job at Edina Realty Mortgage, a summer at a dry
8 cleaners in Chanhassen. Holidays from college at the Target
9 in Chanhassen.

10 Q. When you joined M&I in January of 2005, what was your
11 role?

12 A. AML analyst.

13 Q. And we know that AML stands for anti-money laundering,
14 correct?

15 A. I'm sorry. Could you repeat your question?

16 Q. Sure. When you had joined M&I in January of 2005, what
17 was your role?

18 A. I was actually an AML intern at that time. I'm sorry.

19 Q. Understood. But AML still stands for anti-money
20 laundering?

21 A. Yes.

22 Q. What led you to pursue a career in the banking industry?

23 A. I met with people at M&I at a career fair at Marquette
24 and I -- they asked me what my favorite class was, and I was
25 very excited about an economics and law class at the time.

I gave them my resumé, we talked some more, and a few weeks later they offered me a job and I took it.

Q. Why did you choose M&I Bank as the place to start your career?

A. It had a good reputation and I liked the fact that it was based in Milwaukee, where I was going to school, and they had a strong presence in the Twin Cities in case I wanted to come home.

Q. How long were you an AML intern?

A. A year.

Q. Who did you report to while you were an AML intern at M&I?

A. Kelley Maltsch.

Q. Can you spell the last name -- first name and last name?

A. I believe it's K-e-l-l-e-y, M-a-l-t-s-c-h or something very similar to that.

Q. What was your next role after you were an AML intern?

A. AML analyst.

Q. Over what period of time were you an AML analyst?

A. Approximately December 2005 through 2008.

Q. And during that period of time, who did you report to while you were an AML analyst?

A. Bernita Hile.

Q. After being an AML analyst, did your job change?

A. Do you mean when I moved from being an analyst to an

investigator -- or, excuse me, an intern? Can you clarify?

Q. My understanding is that after you were an AML analyst, your job title switched slightly to become an AML investigator; is that correct?

A. Yes.

Q. From when to when were you an AML investigator?

A. I believe it was approximately 2008 to 2012.

Q. What's the distinction between an AML analyst and an AML investigator?

A. That's kind of evolved over time. Back at that time, it wasn't quite as clearly defined, but an investigator was more experienced.

Q. And you were an AML investigator from March of 2008 to 2012?

A. Yes.

Q. When you were an AML investigator, who did you report to?

A. Bernita Hile.

Q. My understanding is that you are currently employed at BMO Financial Group, correct?

A. Yes.

Q. What is your current job title?

A. AML manager.

Q. In global asset management?

A. Yes.

1 Q. What are your current job responsibilities?

2 A. The group that I manage, we conduct KYC reviews when
3 onboarding new clients and conduct risk scoring, enhanced
4 due diligence as necessary for clients involved.

5 Q. You said that you conduct KYC reviews. KYC stands for
6 "know your customer"?

7 A. Yes.

8 Q. How long have you been in that role?

9 A. About five years.

10 Q. Where are you based?

11 A. Milwaukee.

12 Q. When working for M&I, now BMO, have you always worked
13 out of Milwaukee?

14 A. Milwaukee or a suburb of Milwaukee.

15 Q. Now, I want to focus your time as an AML analyst and AML
16 investigator while at M&I.

17 Let's start off with your general training. What
18 sort of certifications or other trainings have you received
19 with respect to anti-money laundering?

20 A. I have my ACAMS certificate, and I have gone through
21 numerous AML trainings over my career.

22 Q. Let's start with your ACAMS certificate. What does
23 ACAMS -- what does that stand for?

24 A. Association of Certified Anti-Money Laundering
25 Specialists.

1 Q. Why did you become certified as an AML specialist?

2 A. I thought it would help me perform better in my job, as
3 well as move up in my career.

4 Q. And what would have been required for you to receive
5 your ACAMS certification?

6 A. There were some requirements you had to meet, like
7 number of years in a related field. There was a self-study
8 exam, and you would need to pass the exam in order to be --
9 to receive the certification.

10 Q. When did you become certified?

11 A. I think in 2012.

12 Q. Are you still certified as an ACAMS specialist?

13 A. Yes.

14 Q. Let's focus -- with respect to training, let's focus on
15 external. And by "external," I mean trainings that were
16 offered outside the bank, in other words, by an organization
17 not associated with M&I or BMO Harris Bank. Do you
18 understand my -- --

19 A. Yes.

20 Q. -- preference?

21 Okay. So let's focus on training. Did you attend
22 any sort of conferences for training purposes?

23 A. Yes.

24 Q. Did you attend these sorts of conferences during the
25 period of 2005 to 2008?

1 A. Yes.

2 Q. Okay. So let's focus on that period of time. What sort
3 of topics would have been covered during that period for
4 purposes of AML training?

5 A. Back then I remember it being pretty broad AML topics,
6 but there was heavy emphasis and focus on cash structuring,
7 cash-intensive businesses.

8 Q. Why were you attending these sorts of conferences during
9 the 2005 to 2008 period?

10 A. To learn more about AML.

11 Q. How would you bring that sort of information from the
12 conferences back to your colleagues at the bank at that
13 time?

14 A. We would have the people that attended these training
15 sessions or conferences prepare a summary and then go over
16 it to the team, usually at staff meetings.

17 Q. Why? Why would you be bringing this sort of information
18 back to your colleagues at the bank at this time?

19 A. So that everyone had access to similar training.

20 Q. So -- again, so far we've been talking about external
21 opportunities for training with respect to AML. Now I want
22 to shift and focus on internal trainings, and by that I mean
23 trainings that were offered by the bank, and I want to focus
24 on the period of time of 2005 to 2008.

25 Did you receive training from M&I during the 2005

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1 to 2008 period?

2 A. Yes. Yes.

3 Q. What sort of training did you receive?

4 A. There was annual AML compliance training that all bank
5 employees had to take, and then there were some topics that
6 more -- our senior members of the AML team would provide
7 training on.

8 MS. MOMOH: Mr. Herzka, if you can put up
9 Exhibit -- Plaintiff's Exhibit 004. This is an admitted
10 exhibit.

11 BY MS. MOMOH:

12 Q. Ms. Pesch, I'm showing you what's already been admitted
13 into evidence Plaintiff's Exhibit Number 4. You were asked
14 questions about this at some point today or yesterday. Do
15 you recall?

16 A. Yes.

17 Q. Describe for the members of the jury how this sort of
18 training material -- you see that it's a PowerPoint slide
19 deck, correct?

20 A. Yes.

21 Q. Describe for the jury how this sort of training material
22 would have been presented to you during this 2005 to 2008
23 period.

24 A. This training was dated 2004, so I did not attend the
25 in-person session for this, but I was told that Kelley

1 Maltsch and some other senior members of the AML team went
2 around and provided this training in person. I received a
3 copy of this PowerPoint to review when I started.

4 Q. How frequently were you trained on material like this
5 during the 2005 to 2008 period?

6 A. We received similar training to this at least on an
7 annual basis.

8 Q. And this is -- these are just training materials, but I
9 want to ask you a question with respect to policies and
10 guidelines. So not the PowerPoint deck, right? But I want
11 to talk to you about policies and guidelines.

12 With respect to policies and guidelines during the
13 2005 to 2008 period, how frequently would you have been
14 trained on those materials?

15 A. I would say whenever there were updates or they felt
16 things needed to be refreshed.

17 Q. And can you give me a period of time? Are we talking
18 monthly? Annually?

19 A. I would say we frequently talked about AML procedures
20 and guidelines in staff meetings.

21 Q. How long would these training sessions generally last?

22 A. I would say -- I'm sorry. Like the annual training or
23 in the staff meetings?

24 Q. Let's start with the annual trainings.

25 A. That was about an hour, typically.

1 Q. Staff meeting training, how long would that last?

2 A. I would say it depended on the topic being presented and
3 how familiar we were with it.

4 Q. I'm sorry. Can you repeat that, please?

5 A. In the staff meetings, it would depend on the topic
6 being presented and how familiar we were with it. If it was
7 something new, it could take a lot longer than something
8 that was -- we were just covering as a refresher or
9 reminders.

10 MS. MOMOH: Mr. Herzka, if you could put up
11 page 10 of Plaintiff's Exhibit 004.

12 BY MS. MOMOH:

13 Q. Okay, Ms. Pesch, do you see slide 10 in front of you?

14 A. Yes.

15 Q. And just so you know, you're looking at the screen, but
16 you can also look at the binder that is near you. So you
17 see that I have exhibits that are in the binder, and then
18 Mr. Collyard had given you some exhibits as well.

19 Defendant's exhibits begin DX, D as in David, X as in x-ray,
20 and then the other set of binders is with respect to
21 documents beginning with P, as in Patrick.

22 Right now you can look at that binder from
23 plaintiff and if you could go to slide 10, please, page 10.
24 Okay?

25 A. Yes.

1 Q. Now can you read out loud the -- where it says,
2 "Suspicious Activity" and then the text that follows, do you
3 mind reading that out loud, please?

4 A. Uh-huh. "Suspicious Activity. A transaction: Is
5 structured to avoid reporting or recordkeeping requirements.
6 Has no apparent lawful purpose. Is not the sort the
7 customer would normally be expected to conduct."

8 Q. Suspicious activity, is that one of the concepts that
9 you would have been trained on during the relevant period of
10 2005 to 2008?

11 A. Yes.

12 Q. Again, the word "suspicious activity," what did that
13 phrase mean to you during this period of 2005 to 2008?

14 A. Activity that didn't appear lawful or expected for the
15 customer.

16 Q. Did your training during this period of time focus on
17 particular types of customer transactional activity that
18 would be suspicious?

19 A. Yes.

20 Q. What types of transactional activity would have been
21 focused on during the 2005 to 2008 period?

22 A. There was a lot of focus on cash.

23 Q. You said there would be a lot of focus on cash. What
24 would be an example of suspicious activity related to cash
25 during the relevant period from 2005 to 2008?

1 A. Cash deposits or withdrawals that were structured to
2 avoid the CTR reporting threshold.

3 Q. You just stated "that were structured to avoid the CTR
4 reporting threshold. What does CTR stand for?

5 A. Currency Transaction Report.

6 MS. MOMOH: Mr. Herzka, if you could go to page 33
7 of the same document.

8 BY MS. MOMOH:

9 Q. And, Ms. Pesch, take your time if you want to review the
10 slide before I ask you a question and then let me know when
11 you have reviewed it.

12 (Witness reviews document)

13 A. Okay.

14 Q. All right. Now we're looking at page 33 of Exhibit 4
15 from plaintiff, and at the top you see, "Customer
16 Identification Program (CIP)." Do you see that?

17 A. Yes.

18 Q. Is this another concept that you would have been trained
19 on during the relevant period of 2005 to 2008?

20 A. Yes.

21 Q. The concept of Customer Identification Program, CIP,
22 what did that mean to you during that period?

23 A. Verifying that the customer was who they said they were.

24 Q. If you could go to page 16 of the same document. Now,
25 if you can read the slide to yourself, the topic -- at the

top the title is "Risks of Non-Compliance." Okay?

A. Yes.

Q. Now, do you remember being trained on the risks of noncompliance with respect to anti-money laundering policies?

A. Yes.

Q. What were those risks?

A. Reputation risk for the bank, civil and criminal penalties and fines for the financial institution as well as their employees, and it could --

Q. The -- go ahead.

A. Oh. And it could impact the bank's strategic plan --

Q. So I'm going just going to read --

A. -- or charter.

Q. I'm just going to read the second bullet point where it says, "Civil and criminal penalties and fines against financial institutions and their employees are possible."

Okay. So when you were trained on this concept, what sort of impact did it have on you to know that you personally could be facing civil and criminal penalties and fines for noncompliance?

A. It made me realize that it was very serious work.

Q. That what was very serious work?

A. AML work.

Q. Now, you've been an employee of M&I and now BMO for over

1 17 years, correct?

2 A. Yes.

3 Q. Did your understanding of the risks of noncompliance
4 ever change?

5 A. No.

6 Q. During the 2005 to 2008 period, what were your
7 observations of managers at M&I with respect to whether they
8 upheld the importance of compliance of these AML policies?
9 And to be clear, I'm not asking you what did management at
10 M&I say during this time. I'm asking you: What were your
11 observations of managers with respect to the risks of
12 noncompliance?

13 A. I always --

14 MR. COLLYARD: Objection, Your Honor, lack of
15 foundation, speculation.

16 THE COURT: Overruled.

17 THE WITNESS: I --

18 BY MS. MOMOH:

19 Q. Would you like me to repeat the question?

20 A. Yes.

21 Q. So, again, during this 2005 period, what were you
22 observations of managers at M&I with respect to whether they
23 upheld the importance of compliance of these AML policies?

24 A. I observed managers placing importance on it, and they
25 reiterated it in the messages they gave.

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1 Q. How so?

2 A. I remember Peter Janczak in particular repeatedly saying
3 it's not only a requirement, it's the right thing to do.

4 MR. COLLYARD: Objection, Your Honor, hearsay.

5 THE COURT: Sustained.

6 MR. COLLYARD: Move to strike as well, Your Honor.

7 MS. MOMOH: Your Honor, if I may, the witness has
8 already testified after I asked my question.

9 THE COURT: There's a motion to strike.

10 MR. COLLYARD: Move to strike, Your Honor.

11 THE COURT: Granted.

12 BY MS. MOMOH:

13 Q. Ms. Pesch, based on your time at M&I during the 2005 to
14 2008 period, what was your understanding of management's
15 position as it relates to AML policy compliance? And,
16 again, I'm not asking you with respect to what management
17 said, but what was your understanding of management's
18 position as it relates to AML policy compliance?

19 A. That it was something that needed to be followed.

20 Q. Why?

21 A. Because it was a requirement and the right thing to do.

22 Q. Ms. Pesch, we just talked about the various ways you
23 were trained as an AML analyst at M&I. What were your
24 specific job responsibilities as an AML analyst?

25 A. My primary responsibility was to conduct transaction

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1 monitoring.

2 Q. Can you just briefly describe what you mean by
3 "transaction monitoring."

4 A. We would review activity that alerted in Searchspace and
5 review the transactions to determine if there was
6 potentially suspicious or suspicious activity.

7 MS. MOMOH: Mr. Herzka, if you can put up what's
8 been admitted as Plaintiff's Exhibit P-0179, and if you can
9 call out the top of the document all the way until the end
10 of the word "applicable regulatory reports" under "Primary
11 Function."

12 BY MS. MOMOH:

13 Q. Ms. Pesch, you remember seeing this document and being
14 shown it by Mr. Collyard, correct?

15 A. Yes.

16 Q. And you see that this is a job description for the
17 anti-money laundering analyst position?

18 A. Yes.

19 Q. What is an alert?

20 A. An alert is activity that was flagged in Searchspace as
21 requiring review.

22 Q. When you're reviewing an alert -- and we'll get into
23 this -- there were policies and guidelines that applied,
24 correct?

25 A. Yes.

1 Q. Would those guidelines and policies, would they be
2 static in the sense that they wouldn't change or would they
3 evolve over time?

4 A. They evolved over time.

5 Q. What is a SAR, S-A-R? What is a SAR?

6 A. Suspicious Activity Report.

7 Q. Now, the alert adjudication process, right -- you
8 mentioned reviewing an alert. Another way to call that is
9 alert adjudication, correct?

10 A. Yes.

11 Q. Would the process with respect -- and let's be general.
12 Give me a general description as to how you would adjudicate
13 an alert in the 2005 to 2008 period.

14 A. We would open the alert, see who the customer was, what
15 they alerted for. We would look to see if they had any
16 related alerts. We'd go and open those, do the same thing,
17 verify it was the same customer, see what they alerted for,
18 look for previous alerts, see what type of activity alerted,
19 and then we would go into the alert and review the
20 transactions.

21 Q. And part of this was done -- all of this would have been
22 done through Searchspace?

23 A. Yes.

24 Q. The alert adjudication process that you just described,
25 was that the same for wires and checks?

1 A. Yes.

2 Q. You would process an alert with respect to wires and
3 checks in the same way?

4 A. Well, for a wire alert we would focus more on the wires.
5 And for an alert for checks, we would focus more on the
6 checks.

7 Q. Okay. So there was a difference, then, between how you
8 would review an alert for a wire as opposed to a check,
9 correct?

10 A. Yes.

11 Q. Okay. How would you alert -- how would the alert
12 adjudication process differ with respect to checks?

13 A. For checks you could not see anything in Searchspace
14 other than the date and the value, so you were required to
15 go to another system to view the checks.

16 Q. How would that process compare to when you're reviewing
17 a wire?

18 A. With wires you could typically see who the originator
19 and beneficiary was within Searchspace.

20 Q. Now, you had said that you were previously an AML
21 analyst and an AML investigator during the 2005 to 2008
22 period, correct?

23 A. Yes.

24 Q. Were both positions part of M&I's AML Monitoring Group?

25 A. Yes.

1 Q. Okay. So let's go into more detail as to how would
2 adjudicate an alert in Searchspace. Who would assign the
3 alert to you as an AML analyst?

4 A. Typically the lead analyst.

5 MS. MOMOH: Mr. Herzka, if you could put up
6 Plaintiff's Exhibit 0234. Okay. Mr. Herzka if you can cull
7 out the language where it says "Initial Action," the entire
8 section under Roman numeral I, please.

9 BY MS. MOMOH:

10 Q. Okay. Ms. Pesch, are you looking at page 1 of
11 Exhibit 0234?

12 A. Yes.

13 Q. Okay. Looking at plaintiff's exhibit, do you see where
14 the document says, "Initial Action"?

15 A. Yes.

16 Q. And after it -- it says, "Initial Action. Review past
17 alert activity and comments in Searchspace."

18 Okay. So focusing on the 2005 to 2008 period,
19 once an alert was assigned to an AML analyst, what would the
20 analyst have done next to begin to review the alert?

21 A. They would have looked for previous alerts in the
22 comments.

23 Q. Then what would the analyst do with respect to reviewing
24 the alert?

25 A. Look and see if there were any other open alerts for

1 that same customer.

2 Q. So with respect to looking to see if there were any
3 other open alerts for the same customer, why would you have
4 been doing this? Why would the AML analysts have been doing
5 this?

6 A. To make sure that we reviewed any current activity that
7 had been flagged together.

8 Q. So after you had looked at the current activity that had
9 been flagged together, what would have been the next
10 process?

11 Let's focus on the research that would have been
12 involved when you were adjudicating an alert during the 2005
13 to 2008 period.

14 So when you would have been researching a bank
15 customer, what sort of steps would you have taken to
16 research the customer transactional activity that had
17 alerted?

18 A. We would conduct internet research to try to figure out
19 who the customer was, look for a website, go to the
20 Secretary of State websites perhaps to verify they were a
21 legitimate business. We used a variety of internet search
22 engines, like Google and Yahoo, and I think Ask Jeeves
23 was -- I remember using that a few times or sometimes.
24 Hoovers. There was more stuff you could access without
25 having a subscription back then, like Hoovers.

1 Q. What's Hoovers?

2 A. It was a website that gave information on companies.

3 Q. During the 2005 to 2008 period, why would you have been
4 using Hoovers to research customer transactional activity
5 that had alerted?

6 A. To help us understand what business they were in.

7 Q. "To help us understand what business they were in." Who
8 is the "they" that you are referring to?

9 A. The client.

10 Q. The client being the customer of the bank?

11 A. Yes.

12 Q. And to be clear, not the entity that the customer of the
13 bank is interacting with, correct?

14 A. Correct.

15 Q. You mentioned external sources of research tools that
16 you would use. You mentioned the internet. You mentioned
17 Hoovers. You mentioned the Secretary of State as well.

18 Let's talk about Secretary of State. With respect
19 to the Secretary of State website, why would you have been
20 using that as a tool to conduct research with respect to
21 customer transactional activity that had alerted during the
22 period of 2005 to 2008?

23 A. It could prove that they were registered with the State
24 to do business, that they were a legitimate company.

25 Q. And, again, you said, "It could prove that they were

1 registered with the State to do business." Who is the
2 "they"?

3 A. The client.

4 Q. The client being the customer of the bank?

5 A. Yes.

6 Q. And you said, "that they were a legitimate company." By
7 "they," again, you're referring to the customer of the bank?

8 A. Yes.

9 Q. And not the entity that the customer would be dealing
10 with, correct?

11 A. Yes.

12 Q. So we were talking about internal -- we were talking
13 about external research tools. I want to focus on an
14 internal tool.

15 What about MIContacts? Are you familiar with
16 MIContacts?

17 A. Yes.

18 Q. What is MIContacts?

19 A. It was a resource that was available to M&I employees
20 where employees that had customer interaction could go in
21 and create notes about their meetings or discussions with
22 the customers.

23 Q. You said that it was available to M&I employees who
24 were -- who had customer interaction. Is that what you
25 said?

1 A. Yes.

2 Q. Who would have been employees at M&I Bank that would
3 have had customer interaction?

4 A. That would have been the bankers or relationship
5 managers, I think potentially the people that worked at the
6 branches, so like the tellers.

7 Q. Would it include members of the AML Monitoring Group?

8 A. We could view it. I don't remember being able to add
9 comments.

10 Q. Okay. So, just to be clear, members of the AML
11 Monitoring Group, were they members of the frontline
12 business at the bank?

13 A. No.

14 Q. Why would an analyst be using MContacts as a research
15 tool during the 2005 to 2008 period to research an alert
16 with respect to customer transactional activity?

17 A. The people that were leaving the notes were the ones
18 that interacted with the customers, they knew the customer
19 and the relationship, and they were a good resource to get
20 information about what that client might have been doing at
21 that time.

22 Q. During the 2005 to 2008 period, did analysts in the AML
23 Monitoring Group interface directly with customers as part
24 of their research when adjudicating alerts?

25 A. No.

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1 Q. Why not?

2 A. We didn't have the relationship with the customer.

3 Q. Any other reason?

4 A. Depending on what was going on, if there was potentially
5 suspicious activity, it could tip them off.

6 Q. And that would be a reason why not to contact the
7 customer directly?

8 A. Yes.

9 Q. To your knowledge, has this changed since September of
10 2008?

11 A. No.

12 Q. During the 2005 to 2008 period, would you ever have
13 contacted the bankers or the frontline business associates
14 as part of your research when adjudicating an alert?

15 A. Yes.

16 Q. Under what circumstances would you have done that during
17 the relevant period?

18 A. If there was activity that we felt was potentially
19 suspicious and we couldn't find an explanation for.

20 Q. What would be an example of when this might have
21 occurred?

22 A. Like if a customer had a huge cash withdrawal that was
23 unusual for them.

24 Q. Why would you find the need to contact a frontline
25 business worker at this time?

1 A. They might know why the customer did it.

2 Q. And in the example that you gave, you said, "Like" --
3 I'm just quoting you -- "Like if a customer had a huge cash
4 withdrawal that was unusual for them." What do you mean by
5 "unusual"?

6 A. Not something they would typically do.

7 Q. So in your example, if the transaction had not been
8 unusual, would the analyst have contacted the frontline
9 business worker?

10 A. Sorry. Can you repeat that?

11 Q. Sure. So just using your example, you had said that the
12 transaction was unusual for the customer. So I'm saying if
13 the activity for the customer was not unusual in your
14 example, would the analyst have gone to the frontline
15 business worker in that scenario?

16 A. No.

17 MR. COLLYARD: Objection, Your Honor.

18 THE COURT: The basis?

19 MR. COLLYARD: Speculation and leading.

20 THE COURT: Overruled.

21 BY MS. MOMOH:

22 Q. If I can ask my question again, using your example --
23 okay? -- you had said that if there was an unusual customer
24 activity that you would -- an analyst could go to a
25 frontline business worker. Okay?

And so I'm saying if the activity of the customer had not been unusual under that example, would the analyst then go to the frontline business worker of the bank?

A. No.

Q. Was it ever a requirement in the banking industry for the AML Monitoring Group to reach out to those bankers or frontline business associates for alert adjudication purposes?

MR. COLLYARD: Objection, Your Honor --

THE WITNESS: No.

MR. COLLYARD: -- lack of foundation.

THE COURT: Overruled.

MS. MOMOH: Your Honor, may I ask the question again and then get the answer so it's clear for the record?

THE COURT: You may.

MS. MOMOH: Thank you, Your Honor.

BY MS. MOMOH:

Q. Was it ever a requirement in the banking industry for the AML Monitoring Group to reach out to those bankers or frontline business associates for alert adjudication purposes?

A. No.

Q. To your knowledge, has this changed since September of 2008?

A. No.

1 Q. Okay. So we've been talking about research, and we
2 discussed some internal and external tools for review.

3 After you would finish this research, then what
4 would an AML analyst do during this 2005 to 2008 period?

5 A. Start putting comments together to summarize the alert.

6 Q. You mentioned comments, and plaintiff had shown you some
7 alerts in Plaintiff's Exhibit 333. Are those the comments
8 that you are referring to?

9 A. Yes.

10 Q. Now, we've seen some of the alerts over the course of
11 these two days. Explain to the jurors what your review of
12 the transactional activity would look like in Searchspace.
13 Just paint a picture for the -- because we don't have a
14 computer in front of us, at least the jurors don't, so if
15 you could paint a picture as to what the analyst would
16 actually see when you are now reviewing the transactional
17 activity after you have finished your research.

18 A. We would see a list of data that listed all of the
19 transactions. It -- in order to sort it or rearrange it,
20 you would need to get it out of Searchspace into Excel.

21 Q. What fields would have been available to you?

22 A. You would have seen the transaction date, the value, the
23 transaction type, and then depending on the type of
24 transaction -- so like the incoming wires, you could also
25 see the originator and beneficiary or there were fields for

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1 that data.

2 Q. So, again, when we were talking about reviewing an alert
3 through Searchspace during this 2005-2008 period, the
4 analyst would be assigned an alert, the analyst would
5 research that alert, and then the analyst would turn to
6 transactional activity. What time frame would the analyst
7 be reviewing with respect to reviewing the alert that they
8 were assigned to?

9 MR. COLLYARD: Objection, Your Honor, lacks
10 foundation with respect to other analysts.

11 THE COURT: Sustained.

12 BY MS. MOMOH:

13 Q. Okay. Ms. Pesch, you were an analyst during the period
14 of 2005 to 2008, correct?

15 A. Yes.

16 Q. Okay. So let's -- I'll direct my attention to you.
17 Okay? And just to be clear for the record, counsel, he
18 showed you various comments that were reviewed and entered
19 into by various AML analysts over the period of 2005 to
20 2008, correct?

21 A. Yes.

22 Q. And those comments by the other analysts were in
23 Plaintiff's Exhibit 0333, correct?

24 MR. COLLYARD: Objection, leading, Your Honor.

25 THE COURT: Sustained.

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1 BY MS. MOMOH:

2 Q. Let's just focus on you, Ms. Pesch. So, again, we're
3 talking about the 2005 to 2008 period with respect to
4 adjudication of an alert.

5 And my question with respect to you being an AML
6 analyst in that period of time, what would have been the
7 time frame with respect to alerts that were reviewed at that
8 time?

9 A. We would have taken all of -- we would have looked at
10 the months that they alerted, and we would have taken that
11 through the end of the most current month of data available.

12 Q. And in your review of the transactional activity in the
13 account over that period of time, if nothing in the account
14 looked unusual, then what?

15 A. Then we would write up our comments, submit them in
16 Searchspace, and close the alert.

17 Q. What do you mean, "close the alert"?

18 A. We would select the alert end state of closed to
19 expected.

20 Q. Okay. So we just talked about a circumstance where
21 there would have been nothing in the account that looked
22 unusual.

23 So, alternatively, if you had found something that
24 was suspicious in the account, then what would you, as an
25 analyst, do during this 2005 to 2008 period?

1 A. If you were still in training, you would send it to the
2 manager. If you weren't, then you would escalate it to a
3 case.

4 Q. Without identifying any sort of customer information,
5 what would be an example of a time when you, you personally,
6 when you would have escalated an alert for further review
7 during the 2005 to 2008 period? And to be clear, let's say
8 before September of 2008.

9 A. I remember one alert that I escalated to case involved a
10 client who had a number of large wires to the Philippines
11 and there was -- they involved jewels or precious stones.

12 Q. Why would you have escalated this alert for further
13 review?

14 A. Because it involved two high-risk factors.

15 Q. Which two high-risk factors?

16 A. Wires involving foreign countries, and precious metals
17 and stones is considered a high-risk industry type.

18 Q. So you mentioned two high-risk factors. Let's start
19 with the first. The first high-risk factor you mentioned
20 was foreign countries, okay.

21 Now, counsel for plaintiff, Mr. Collyard, had
22 asked you questions about the PCI account, correct?

23 A. Yes.

24 Q. PCI was a customer of M&I?

25 A. Yes.

1 Q. PCI was a customer of M&I during the 2005 to 2008
2 period?

3 A. Yes.

4 Q. During that period of time, did PCI ever -- was it ever
5 involved with respect to -- did any of the transactions with
6 respect to PCI ever involve foreign countries?

7 A. Not that I can recall.

8 Q. Okay. And you mentioned another risk factor, precious
9 metals and stones. During that period of time, did PCI ever
10 engage in transactions involving precious metals and stones?

11 A. Not that I can remember.

12 Q. What response did you receive from the AML Monitoring
13 Group when you would have escalated an alert for further
14 review?

15 A. I would have escalated it to the manager, not the group.
16 Sorry.

17 Q. Understood. So you would have escalated it to the lead
18 analyst, or who would you have escalated it to?

19 A. That evolved over time. I think initially it just went
20 to the manager, and then at some point the lead analyst also
21 got involved in that.

22 Q. Okay. Let's focus on the manager, then. And the
23 manager was a member of the AML Monitoring Group, correct?

24 A. Yes.

25 Q. Okay. So let me tailor my question, then. So what sort

1 of response would you receive from the manager when you
2 would have escalated an alert for further review?

3 A. Typically it would have involved feedback, like
4 additional things to look into or areas that needed to
5 clarify, and then ultimately they would -- or, excuse me,
6 the manager would approve it being escalated to a case or --
7 excuse me. Yeah, to the case.

8 Q. Escalating an alert for further review, would that have
9 any sort of bearing on your performance appraisal? In other
10 words, was that ever considered as far as a metric or a goal
11 with respect to your work as an AML analyst?

12 A. No.

13 Q. And let's talk about it from the flip side. So what
14 response did you receive from a manager that would have been
15 a member of the AML Monitoring Group over the 2005 to 2008
16 period when you would have closed an alert?

17 A. Sorry. Could you repeat your question?

18 Q. I'm just asking you to compare. So you already
19 mentioned that if you had escalated a review during the 2005
20 to 2008 period with respect to the manager and the manager
21 reviewing your work, you testified that it had no impact on
22 your evaluation of work during that period, correct?

23 A. Correct.

24 MR. COLLYARD: Objection, Your Honor, leading.

25 THE COURT: Overruled.

1 BY MS. MOMOH:

2 Q. Correct?

3 A. Yes.

4 Q. So I'm asking you to compare that to a scenario where an
5 alert had been closed. Do you understand my question?

6 A. Yes.

7 Q. Okay. So how would the two have compared? The sort of
8 response that you would have received from a manager,
9 comparing it to an alert being escalated compared to an
10 alert being closed, what sort of response would you have
11 received from the manager with respect to your performance
12 appraisal?

13 MR. COLLYARD: Objection, Your Honor, speculation
14 and overly broad, no foundation.

15 THE COURT: Overruled. You may answer if you can.

16 THE WITNESS: That wasn't considered a factor in
17 our performance review.

18 BY MS. MOMOH:

19 Q. So, in other words -- you just said it, right? So let
20 me ask you this: Why do you say that?

21 A. Because we didn't have thresholds where we had to find a
22 certain amount of suspicious activity or not. We were
23 expected to review each alert based on the merit of the
24 alert.

25 Q. "Based on the merit of the alert," what do you mean?

1 A. The activity included within that alert for that client.

2 Q. So we were just talking about performance appraisals,
3 Mr. Collyard had shown you performance appraisals for you
4 over the period of 2005 to 2008. Did you ever have any sort
5 of concerns about escalating or not escalating alerts during
6 the 2005 to 2008 period?

7 A. No.

8 Q. How many alerts would you, as an analyst, during the
9 2005 to 2008 period have reviewed?

10 A. It would depend on what was in each alert, but on
11 average, probably about four a day.

12 Q. You say it could depend. Why do you say that?

13 A. If we found suspicious activity or potentially
14 suspicious activity and had to write a case, that would take
15 more time.

16 Q. I want to focus on Searchspace, and I want to show you
17 what's been admitted as Plaintiff's Exhibit P-0234. And I'm
18 just going to show you these pretty quick and then we're
19 going to take them step by step. Okay?

20 A. Okay.

21 Q. And I'm going to show you four documents. One of the
22 four is not -- has not been admitted by the plaintiff. So
23 you're going to have to have two sets of binders up with
24 you. Okay? So you can have plaintiff's binder and then you
25 can have defendant's binder.

1 Okay. So you see the first one that's been
2 admitted, Plaintiff's Exhibit 234?

3 A. Yes.

4 Q. And then I want to show you what's been admitted as
5 Plaintiff's 0398.

6 A. Yes.

7 Q. Okay. And, actually, can you go back to the first one,
8 please. You recognize this --

9 A. All right. Can you remind me of the number? I closed
10 it.

11 Q. 0234.

12 A. Okay.

13 Q. And you recognize this document --

14 A. Yes.

15 Q. -- that you were shown by Mr. Collyard?

16 A. Yes.

17 Q. And I want to draw your attention to the bottom of that
18 document. What's the date that's there?

19 A. January 12th, 2006.

20 Q. Okay. I want to show you the other exhibit, Plaintiff's
21 Exhibit P-0398. Okay. And then do you see -- do you
22 remember being shown this document?

23 A. Yes.

24 Q. Okay. And then if you could look at the bottom left,
25 there's a date. Do you see that?

1 A. Yes.

2 Q. And which date do you see?

3 A. June 7th, 2006.

4 MS. MOMOH: Your Honor, if I could have a moment
5 to confer with opposing counsel?

6 THE COURT: You may.

7 (Ms. Momoh and Mr. Collyard confer)

8 BY MS. MOMOH:

9 Q. Okay. So you can turn to my binder. Actually, before
10 we do that, let's -- let me wait. Let's focus on the first
11 two.

12 So you saw the first document that had a date of
13 January of 2006?

14 A. Yes.

15 Q. And then the other one had a date of June 7th of 2006?

16 A. Yes.

17 Q. My understanding is that the guidelines for Searchspace
18 evolved over time; is that correct?

19 A. Yes.

20 Q. Okay. So I want to focus on the guidelines that existed
21 during the period of 2005 to 2008. Okay?

22 A. Yes.

23 Q. So I will be showing you four versions of this document
24 and, again, two of them have already been admitted by
25 plaintiff. I'm going to be attempting to show you two from

our set. So, again, you're going to be working with two different binders for the time being.

Okay. So, generally speaking, how would you as an AML analyst have used these sorts of Searchspace guidelines during the period of 2005 to 2008?

A. I remember referring to this very frequently as I was working alerts. Oftentimes I had it right next to my keyboard.

Q. And during that period of time, why would you have been referring to these additional guidelines for Searchspace so frequently?

A. Because there was a lot covered in here and a lot of different possible outcomes for alerts.

Q. Let's go to Plaintiff's Exhibit 398, page 7. Okay. Do you see this page, Ms. Pesch?

A. Yes.

Q. Do you see where it says, "Reminders" towards the top?

A. Yes.

Q. Okay. So let's read this. It says, "Reminders. Remember to ask yourself the following questions when closing an alert to expected activity. Do I know where the funds came from? Do I know where the funds went? Do the comments provided convince the reader that the alert is not suspicious?"

Let's focus on the first question, "Do I know

Pesch Direct
1 where the funds came from"? What does this mean?

2 A. What was the source of the funds.

3 Q. And earlier Mr. Collyard had questioned you with respect
4 to the concept of source or use of funds, correct?

5 A. Yes.

6 Q. So with respect to the question "Do I know where the
7 funds came from?" that is the same as source of funds?

8 A. Yes.

9 Q. What does that mean?

10 A. It means how the money came into the account.

11 Q. What sort of information would an AML analyst, you,
12 during the 2005 to 2008 period have needed to know to answer
13 this question, "Do I know where the funds came from?"

14 MR. COLLYARD: Objection, lacks foundation as to
15 other analysts.

16 THE COURT: Overruled. You're asking about what
17 an analyst would need to know?

18 MS. MOMOH: I asked Ms. Pesch with respect to her
19 as an analyst during this 2005 to 2008 period, what
20 information would you, as an AML analyst, have needed to
21 know during this period to have answered the question "Do I
22 know where the funds came from?"

23 THE COURT: As I said, the objection is overruled.

24 MS. MOMOH: Thank you.

25 THE COURT: You may answer.

1 THE WITNESS: You would need to know the types of
2 transactions that the money came in through.

3 BY MS. MOMOH:

4 Q. So what would be an example, then, of source of funds to
5 answer this question?

6 A. Like if credits to the account were cash.

7 Q. How does that answer the question "Do I know where the
8 funds came from?"

9 A. The money coming into the account that -- the credits
10 were cash.

11 Q. Let's look at this same page here where it says, "Do I
12 know where the funds went?" Okay. What does this mean?

13 A. It means that if the money went out of the account, how
14 it went out of the account.

15 Q. Okay. So we're talking about the concept of source or
16 use of funds. So with respect to the question "Do I know
17 where the funds went?" is that the same as use of funds?

18 A. Yes.

19 Q. What sort of information would you, as an AML analyst,
20 have needed during the 2005 to 2008 period to answer the
21 question "Do I know where the funds went?"

22 A. It would probably depend on the transactions involved.

23 Q. How so?

24 A. Because that's how you would explain the funds leaving
25 the account.

1 Q. What would be an example of use of funds?

2 A. If the funds were withdrawn and used to purchase an
3 official check.

4 Q. And you're talking about checks. What would you have
5 needed to know to answer this question with respect to wire
6 transfers?

7 A. You would have needed to know that the funds went out in
8 wires and any other potential transactions that may have
9 been included.

10 Q. So we're talking about use of funds. Is use of funds
11 the same as purpose of funds?

12 A. No.

13 Q. Why do you say that?

14 A. Because purpose would be what they were used for.

15 Q. "What they were used for." "They" being what?

16 A. So, like, if it was a wire -- sorry. Can you repeat?

17 Q. Let me ask the question differently, then. During the
18 period of 2005 to 2008 -- because you just said that source
19 of funds does not equate to purpose of funds, right?

20 A. Uh-huh.

21 Q. So let's say an analyst -- let's say you were reviewing
22 a wire -- you're reviewing wire activity in a customer
23 account because there was activity that alerted. Would you,
24 as an analyst, have been required to understand the business
25 activity of the beneficiary of the wired funds or not?

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1 A. No.

2 Q. Would you, as an analyst, during that same period would
3 you have been required to understand how the beneficiary
4 ultimately used those wired funds or not?

5 A. No.

6 Q. And, again, with respect to beneficiary, that would be
7 the entity that had received the funds from the customer of
8 the bank?

9 A. Yes.

10 Q. And, Ms. Pesch, again, it's my understanding that the
11 Searchspace guidelines continued to evolve over time, so I
12 want to show you another page of Plaintiff's Exhibit 0234.
13 If we can look at pages 1 to 2.

14 Okay. Do you see at the bottom where it begins,
15 "Alert Closing"?

16 A. Yes.

17 Q. Okay. So let's look at this page together. And it
18 says -- and, again, you see the revised date at the bottom
19 here and it's January 12th, 2006?

20 A. Yes.

21 Q. You can see here that it says that there are five alert
22 closing states, correct?

23 A. Yes.

24 Q. So during the period of time, at least with respect to
25 this particular guideline, what were the five closing states

1 that existed?

2 A. They were quick close, close to security, close to check
3 fraud, close to expected, and full case review/close to SAR
4 Committee review.

5 Q. Briefly, can you explain, what does "quick close" mean?

6 A. Quick close was a quicker way of documenting an alert
7 that was closed.

8 Q. And before we even get there, explain generally, what
9 are alert closing states?

10 A. They were ultimately, like, decisions where you would
11 move the alert to to close it.

12 Q. Okay. So you just described the quick close. What
13 about close to security?

14 A. That meant you identified activity that was potentially
15 concerning, but it didn't have a -- it wasn't AML related,
16 it was more of a security issue. So we would refer it to
17 the security group at M&I.

18 Q. When you say "security," what do you mean?

19 A. The M&I security team. So they handled physical
20 security for M&I locations as well as, from what I can
21 recall, like criminal-type situations, robberies, things
22 like that.

23 Q. Then the next one, "Close to Check Fraud," what would be
24 that closing state?

25 A. That would be for activity that appeared to be

1 fraudulent that was conducted through checks. M&I had a
2 separate group that reviewed that.

3 Q. And to be clear, that was not within the AML Monitoring
4 Group?

5 A. Correct.

6 Q. "Close to Expected" is number 4. What is that closing
7 state?

8 A. "Close to expected" meant that the activity wasn't
9 considered suspicious.

10 Q. And then the last one, "Full Case Review/Close to SAR
11 Committee Review," what does that consist of?

12 A. That means a full case review was completed and it went
13 to the SAR Review Committee.

14 Q. Okay. Now, I want to compare that to another guideline.
15 It's --

16 MS. MOMOH: But before we discuss it, Mr. Herzka,
17 if we can take this down.

18 BY MS. MOMOH:

19 Q. I'm going to be showing you, Ms. Pesch, an exhibit that
20 has not been admitted yet. It is Defendant's Exhibit
21 DX-50711.

22 A. 50711?

23 Q. Correct.

24 Okay. Do you see it?

25 A. Yes.

1 Q. Have you -- do you recognize this document?

2 A. Yes.

3 Q. How?

4 A. This was another version of those guidelines that we
5 would use when adjudicating Searchspace alerts.

6 Q. Now, do you see at the bottom of this document there is
7 a date there?

8 A. Yes.

9 Q. And it says, "Revised" and then there's a date, correct?

10 A. Yes.

11 Q. What's the revised date on this document?

12 A. September 2008.

13 Q. Now, even though the revised date on this document says,
14 "09/2008," when do you recall using these sets of
15 guidelines -- and, again, take the time to review the
16 document -- but when do you recall using these sets of
17 guidelines while you were an analyst during the 2005 to 2008
18 period?

19 A. I don't remember exactly when this would have started,
20 but I know it would have been before September 2008.

21 Q. Okay.

22 MS. MOMOH: Your Honor, defendants offer
23 Defendant's Exhibit DX-50711.

24 MR. COLLYARD: No objection, Your Honor.

25 THE COURT: Exhibit DX-50711 is received in

1 evidence.

2 MS. MOMOH: Thank you, Your Honor.

3 If we could go to page 2 of this document,
4 Mr. Herzka, and I want to focus on the section that says,
5 "Alert Closing."

6 BY MS. MOMOH:

7 Q. Okay. So do you see where it says, "There are seven
8 alert closing states"?

9 A. Yes.

10 Q. And before we were looking at five closing states,
11 correct?

12 A. Yes.

13 Q. Which two were added?

14 A. It looks like "Of No Value and "Early Close."

15 MS. MOMOH: Okay. Mr. Herzka, you can take that
16 down.

17 BY MS. MOMOH:

18 Q. Now, you see that the guidelines reference specific
19 reasons that allow an analyst to close an alert. What is
20 the term in Searchspace used to describe these sorts of
21 specific reasons?

22 A. We used the term "filter."

23 Q. Okay. I'm going to ask you a series of questions
24 regarding the various alert closing states, and all of my
25 questions are going to be with respect to the 2005 to 2008

period unless I say otherwise. Okay?

A. Okay.

Q. Now, under what circumstances would an alert qualify for the close to expected state?

A. That would have been for activity that wasn't suspicious.

Q. And under what circumstances would an alert qualify for the full case review/close to SAR Committee review state?

A. That would be when it was obviously suspicious or we suspected it was suspicious.

Q. What about for alerts under the quick close state? Did the circumstances -- so, again, in this question I'm just not asking about -- I'm not grouping it into 2005 to 2008.

So for alerts under the quick close state, did the circumstances under which an alert would qualify for the quick close state change over time?

A. Yes.

Q. Okay. Let's look at page 2 of Plaintiff's Exhibit 0234. Okay. Now, how many filters were there that would allow an analyst to close an alert as you can see in this document?

A. Seven.

MS. MOMOH: Okay. And if you could back out to show again the date on the document, the revised date.

Okay. So if you can go back and zoom in on the seven filters, Mr. Herzka.

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1 BY MS. MOMOH:

2 Q. Ms. Pesch, generally, please tell the jurors what those
3 filters were.

4 A. It was for activity involving a governmental unit;
5 activity that involved an M&I internal account; activity for
6 a customer on the exempt customer list with Phase One
7 exemption; for a single large cash transaction less than
8 \$9,000 with no other unusual activity; activity that was a
9 result of bank service procedures, such as, cash limitation;
10 activity that was a result of seasonal business activity; or
11 activity that was reversed by the customer as not needed for
12 the purpose intended.

13 Q. Okay. So you just described the seven filters that
14 applied at this time. So, to be clear, these were the only
15 circumstances under which an alert could be subject to the
16 quick close state?

17 A. At the time that this was the current guidelines, yes.

18 Q. And just because an alert was subject to quick close,
19 would that alert have received any sort of review or no
20 review at all?

21 MR. COLLYARD: Objection, Your Honor --

22 THE WITNESS: It would have been reviewed.

23 MR. COLLYARD: -- leading.

24 THE COURT: I'm sorry?

25 MR. COLLYARD: Objection, leading.

1 THE COURT: Overruled.

2 THE WITNESS: The alert would still be reviewed.

3 BY MS. MOMOH:

4 Q. The alert would still be reviewed?

5 A. Yes.

6 MS. MOMOH: Mr. Herzka, if you could put up
7 Defendant's Exhibit 50711 and if we could look at pages --
8 at just page 2.

9 BY MS. MOMOH:

10 Q. And according to this document, there are how many
11 filters that are subject to the quick close?

12 A. Five.

13 Q. Please tell the jurors -- because I see the numbers have
14 switched, right? We see filter 1, 4, 6, 7, and 8, correct?

15 A. Yes.

16 Q. And before we saw filters 1 through 7, correct?

17 A. Yes.

18 Q. So we have five. So there's been an addition with
19 respect to filter 8, right?

20 A. Yes.

21 Q. And then there's been some removals. Tell the jurors,
22 please, what changes did you see between these filters
23 between the prior document that we had reviewed at P-0234
24 compared to Exhibit 50711.

25 A. A few of the filters were removed and filter 8 was

added.

Q. A new filter was added, filter 8. What is filter 8?

A. The alert qualifies under the peer-only review procedure for an expedited review and no unusual or activity -- suspicious activity was identified.

Q. Okay. Now I want to focus in on the period of 2006.

Okay? What was the peer-only review in the period of 2006?

A. It was a review option that was available for clients that were on an approved list if the alert met certain qualifications.

THE COURT: Counsel, we're at a point where we need to begin to wrap up for our day, and I need to give our jury their instructions so that they can finish their day on time.

So we will continue with this examination tomorrow morning, and I will tell our witness --

MS. MOMOH: Your Honor, you mean Monday?

THE COURT: Monday morning. I apologize. Thank you for the roar. I've lost track of the days.

MS. MOMOH: Sure.

THE COURT: Monday morning. So it is as if you are on the witness stand, however, for the weekend. So you are not to have any discussions about your testimony during the course of the weekend. But, otherwise, you're free to have a great weekend. And please be prepared to come back

1 to court on Monday and return and resume your testimony.

2 Okay?

3 And, Members of the Jury, I will instruct you --
4 first of all, I'll begin by instructing you to have a great
5 week and don't come here tomorrow. Unless you want to, but
6 we won't be here.

7 And during this recess, as with every other
8 recess, you must not discuss this case with anyone, and that
9 includes other jurors, members of your family, people
10 involved in this trial or anyone else. And do not allow
11 anyone to discuss the case with you or within your hearing.

12 As you know, only you have been chosen for this
13 important role of being jurors in this case, and only you
14 have been selected to -- and sworn to uphold the law. No
15 one else has been chosen to do this important work.

16 And when I say you should not discuss this case,
17 you should not even discuss this case among yourselves or --
18 and not discuss among yourselves anything that you have
19 heard until all of the evidence has been heard and the case
20 has been submitted to you by me for your deliberations
21 because it may affect your final decision.

22 And, of course, if anyone tries to talk to you
23 about this case, please let me know that immediately.

24 And when I say not to discuss this case, I also
25 mean not to e-mail, not to send any kind of texts or

1 blogging or engage in any other kind of written or oral or
2 electronic communication, as I've instructed you before.

3 I don't know whether there will be accounts about
4 this in the media, but do not read any newspaper or written
5 account or watch any television account or listen to any
6 radio program about this trial.

7 And do not do any internet research or consult
8 with any other sources about this case, about the people
9 involved in the case, or the general subject matter of the
10 case.

11 As you know, you must keep an open mind. That's
12 one that's free of outside information. And only in this
13 way will you be able to decide the case fairly based solely
14 on the testimony, based on the evidence that's presented in
15 this courtroom, and based on my instructions on the law.

16 And if you were to decide this case on anything
17 else, it would be an injustice and it would violate your
18 oath. So it's very important that you continue to follow
19 these instructions.

20 I want to thank you for your service and wish you
21 a great weekend, and you are excused for the day. Thank
22 you.

23 **IN OPEN COURT**

24 **(JURY NOT PRESENT)**

25 THE COURT: And for purposes of your testimony, it

1 is as if you were on the witness stand all weekend. Now
2 only for purposes of your testimony -- I hope you have a
3 great weekend -- but please do not discuss your testimony
4 with anyone during the course of the weekend until you
5 return to the witness stand. Thank you.

6 THE WITNESS: Thanks.

7 THE COURT: Okay. And you are excused.

8 You may be seated. I will ask counsel if there
9 are any issues that we need to take up either today or
10 before we begin on Monday?

11 THE COURT REPORTER: Can I get your name?

12 MR. MARDER: Sure. This is David Marder, counsel
13 for the plaintiff.

14 Very briefly, Your Honor, I just want to report on
15 a stipulation that we reached with respect to certain
16 documents. You may recall there was a motion in limine
17 relating to the defendant's financial condition and the
18 financial statements.

19 Mr. Gleeson can correct me if I'm wrong, but we
20 have stipulated to the admissibility of Exhibits 296, 667,
21 and 668 with the caveat that the defendant reserves and
22 preserves all of the objections that they asserted in the
23 motion in limine. But with that caveat, those three
24 exhibits would be going into evidence, 296, 667, and 668.

25 MS. DAVIS: Yes, Your Honor, just for the sake of

1 the record, we object, preserve our arguments in our motion
2 in limine filed at ECF 204, but we understand that was
3 decided by the Court.

4 THE COURT: Thank you. Very well.

5 MS. DAVIS: Morgan Davis on behalf of BMO. Thank
6 you.

7 MR. MARDER: So those are received into evidence,
8 then?

9 THE COURT: I didn't hear you.

10 MR. MARDER: I just confirmed those were received
11 into evidence.

12 THE COURT: That's right. There has been an
13 objection, the objection is noted, and they are received
14 into evidence.

15 MR. MARDER: Thank you, Your Honor.

16 THE COURT: Anything further that needs to be
17 addressed at this time?

18 MS. MOMOH: Not from us, Your Honor. Thank you.

19 MR. COLLYARD: No, Your Honor. Thank you.

20 THE COURT: Thank you, Counsel, and I look forward
21 to seeing you on Monday. I hope you all have a great
22 weekend. Thank you.

23 (Court adjourned at 5:00 p.m.)

24 * * *

25

1 I certify that the foregoing is a true and correct
2 copy of the transcript originally filed on 12/05/2022 and
3 incorporating redactions requested by Attorney Adine S.
4 Momoh.

5 Certified by: s/ Lori A. Simpson

6 Lori A. Simpson, RMR-CRR
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